



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD

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

No. PTA/Enforcement Wireless/Mobile QoS/168/2022/411

Show Cause Notice:	13 th September, 2022
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	19 th December, 2022

The Authority

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

The Issue:

“Failure to meet QoS standards as laid down in the license”

Decision of the Authority

1. Brief facts of the case:

1.1 Precisely stated facts of the case are that Telenor Pakistan (Private) Limited (the “licensee”) is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. NGMS-02/WLL&M/PTA/2014 dated 21st May, 2014, license No. NGMS-05/WLL&M/PTA/2016 dated 14th July, 2016 and license No. MCT-01/Wireless/PTA/2021 dated 10th December, 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 of 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”) the Cellular Mobile Network Quality of Service (QoS) Regulations 2011 (the “QoS Regulations”) and the terms & conditions of the license.

1.3 The Authority in order to ensure that users of telecommunication services get such QoS standard as laid down in the license and QoS Regulations, carried out a survey in 4th Quarter of 2021 at Twelve (12) x cities and Nine (9) x Motorways/Highways in Punjab, Khyber

Pakhtunkhwa and Baluchistan. During the survey, it was identified that QoS results were inconsistent with the parameters as laid down in the license and other enabling provisions. Accordingly, the results were shared with the licensee vide PTA Letters No. PTA/Enf/Enf-Wireless/QoS Survey/48/2021-II dated 9th November and 9th December, 2021 and required the licensee to carry out a detailed analysis of each non-compliant parameters so as to ascertain the cause of services degradation and subsequently take corrective measures to improve services up to the license standards. In addition, the licensee was also required to submit a detailed report of root cause analysis. Resultantly, the licensee intimated that re-drive tests have been conducted which signifies improvement in Quality of Service (QoS) and compliance of all QoS KPIs.

1.4 In order to verify the claim of the licensee and to check the status of the QoS as per applicable regulatory laws, a re-verification survey was carried out in 2nd Quarter from 23rd to 27th May & 2nd June 2022 in 2nd Quarter at Mastung and 30th May to 2nd June 2022 at Mardan. The re-verification survey revealed degraded QoS KPIs at the said cities. 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 aforementioned contravention by bringing and maintaining the required standards of quality of service within fifteen (15) days of the issuance of the SCN and also explain in writing, within thirty 30 days of the issuance of the SCN, as to why an enforcement order should not be passed under Section 23 of the Act for the aforesaid contraventions.

2. In compliance of the SCN, the licensee filed reply vide letter dated 13th October, 2022. For ready reference relevant portion of the reply is reproduced below:

- A. *That KPIs of QoS of the Network can only be measured through manner and Method of Measurement provided in the Act. Rules and the License. BUT ON THE CONTRARY the Surveys are conducted partially through a Method of Measurement of KPIs of QoS as provided in the QoS Regulations, and partially conducted through manner and Method of Measurement of KPIs of QoS which is even in violation of QoS Regulations, however certainly method of measurement of KPIs of QoS used during the Surveys is neither in accordance Method of Measurement of KPIs of QoS as provided in the Act. Rules or the License nor QoS Regulations provide for issuance of SCN.*
- B. *The Licensee even complied with all instructions as given under the First PTA Letter and took all reasonable and prudent measures and steps to provide QoS as per KPIs provided in the License and submitted a detailed report to the Authority vide email dated 10th December, 2021.*
- C. *After issuance of the SCN, the Licensee has remedied all alleged non-compliance of KPIs of QoS reported in the SCN to the extent of Mardan. However, the Licensee could not conduct drive test surveys in Mastung after issuance of SCN due to security issues.*
- D. *Section 23 of the Act provides that where a licensee contravenes any*

provision of this Act or the rules made thereunder or any term or condition of the license, the Authority may issue a notice. Therefore the legislature has excluded the Authority from exercising its powers under section 23 of the Act for any alleged violation of the regulations issued by the Authority, therefore as explained hereinafter the SCN is issued on account of measurement of QoS of some of the KPIs in a manner and Method of Measurement of KPIs of QoS of very small part of the Network of the Licensee in Mardan and Mastung, partially provided in QoS Regulations, and not provided in the Act, rules or the License.

- E. The QoS are to be measurable for each calendar month for the whole Network on the basis of submission of reports under clause 6.5.1 of the License read with A1.4 of the Appendix 3 of License requires, by the Licensee on quarterly basis by using such equipment as the Licensee is required to provide under clause 6.3.1 of the License for monitoring of quality of service, therefore any shortfall in QoS measured on part of network for very limited calls and days does not authorize issuance of SCN.*
- F. Rule 9(1) of the Rules provide that (1) the Authority may monitor compliance by licensees with their licenses in accordance with the terms of their licenses and the Act. (2) If the Authority considers, whether or not as a result of any complaint or made by another person as a result of monitoring by the Authority, that the licensee has contravened any condition of the license, the Authority may serve a written notice requiring the licensee to show cause, within thirty days after the date of the notice, as to why an enforcement order should not be issued. Therefore, monitoring by the Authority for compliance by the Licensee of the terms of the License in the manner other than as provided under the License and the Act is also violation of the Rules.*
- G. Under Rule 9(4) of the Rules read with section 23(2) of the Act, first the Authority is required to identify steps to be taken by the Licensee to remedy any alleged contravention of the terms of the License and if the Licensee fails to take such steps then the Authority may issue SCN for issuance of final enforcement order, however SCN is issued by combining both notices under rule 9(4) and 9(5) of the Rule, despite the fact the Licensee has even remedied alleged breaches as provided under the QoS Regulations.*
- H. The Quality of Service is defined in clause 3(1)(I) of the QoS Regulations means "as specified in the respective License" and the "QoS Regulations" and under clause 5 (1) of the QoS Regulations, the Licensee is required to perform measurement, reporting and record keeping for the quality of service for each reporting period, as per clause (a) thereof in accordance with criteria laid down in the License and the QoS Regulations, as per clause (b) thereof which is provided to the Authority with 15 days prior intimation, as*

per clause (c) thereof, the Licensee is required to furnish result of the quality test and surveys to the Authority for each quarter within 30 days of close of respective reporting quarter and clause (g) thereof requires that period for measurement of quality of service shall be one calendar month starting from 1 January of reporting calendar year and that the Licensee shall maintain such reports for each month and submit the record on quarterly basis. Therefore, quality of service has to be measured on the basis of one month data of the network and not on the basis of drive test survey or for any period less than one month.

- I. The SCN is issued in violation of the License (i) by misinterpreting clause 6.5 of the Licenses 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., (ii) per Appendix 111, the QoS are to be measured on a system wide/coverage area basis only, (iii) further the city/urban/rural basis for enforcement of QoS is not stipulated in Appendix 111 of the license.*
- J. The KPIs of QoS are agreed and provided in the License, which under section 22 of the Act read with rule 10 of the Rules can only be modified with consent of the Licensee or by High Court, therefore the Authority cannot amend such KPIs of QoS or any other term of the License under the disguise of exercise of its powers to issue regulations. It is further submitted that any provision of the regulations, which has an effect of modification of license of the Licensee is null and void having no effect on the right and obligations of the Licensee unless such modification is made as per section 22 of the Act without consent of the Licensee.*
- K. The SCN is issued in violation of the Act 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 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, and to results of a survey that is materially non-compliant with the License, law and regulatory framework.*
- L. The obligations of the Licensee mentioned in 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 condition 3.1 of the License do not extend to regulations or orders that are ultra vires or otherwise illegal; the Licensee cannot be taken to have consented, nor as a matter of law it can be compelled, to abide by regulations or orders that are ultra vires or otherwise illegal.*
- M. 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 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 111 of the License, 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;

- N. *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-wide basis. When viewed on a system wide-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, then are stipulated in Appendix 111 to the License. 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 ultra vires delegated legislation thereunder;*
- O. *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.*
- P. *The QoS is governed by clause 6.5 read with Appendix-3 of the License, which provides that the Licensee shall at all times meet or exceed QoS as provided under Appendix-3 thereof. Clause A 1.1 and 1 of the Appendix 3 of the respective License provides that the Licensee is only required to take reasonable and prudent measures to ensure that Licensed Services are available as QoS provided therein, therefore the Authority can only issue SCN if it finds that the Licensee has failed to take such reasonable and prudent measure, which finding is missing the SCN.*
- Q. *The Licensee in its own reasonable judgment has taken all reasonable and prudent measures to ensure that its Licensed System and Licensed Services under the License are available as per KPIs of QoS as mentioned in the Appendix-3 of the License, and in the face of reality that network is*

dynamically growing every moment, therefore at the time of its design and setup existing demographics and its expected growth is catered for and during the course of time as demographics change the Licensee responds to such changes and enhance its Network and its capacity, which is a continuous process, therefore at the time of Surveys at any particular place, unless the Authority finds that the Licensee has failed to take identified reasonable and prudent measures to provide services in the Survey Area.

- R. *Transient Issues on other operator shared sites: Failure events in Second Survey in June 2022 mainly occurred due to some transient issues in the network resulting from few unstable site of other operator (where licensee is hosted as guest), triggered by abrupt and sudden increase of national grid outages. Licensee has worked with OMO partners to improve the sites and in recent QoS testing around the failure events, KPIs for QoS are found compliant as is evident from Report dated 22 September 2022 and 11 October 22.*
- S. *Mastung is a security problematic area where many anti-state activities have taken place as are regularly reported in national media. Recent events of kidnapping of telecom technical staff in Swat and Baluchistan has forced licensee to exercise more caution keeping in view safety, security and wellbeing of telecom staff and their families. This has resulted in closer coordination with security teams in such areas, hence impacting free movement and network related activities.*

3. Hearing before the Authority:

3.1 In order to proceed further, the matter was fixed for hearing on 19th December, 2022 before the Authority. Mr. Syed Yasir Ali (Senior Manager), Mr. Ali Aamir Khan (Regulatory Head), Mr. Attique Ahmed (Manager), Mr. Rashid Khan (Senior Manager) and Mr. Muhammad Arshad (Advocate) appeared on the behalf of the licensee 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.

4. Findings of the Authority:

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

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(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 an obligation to provide telecommunication services to particular persons or areas to meet minimum standards for quality and grade of services requirement. With regard to monitor and enforce the license condition, under clause 23.7 of part 6 of the Rules, regulation 10 of the Regulations and 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.

4.3 The contention of the licensee that QoS are to be measured for each calendar month for the whole Network and any shortfall in QoS measured on the part of network for very limited calls and days does not authorize issuance of the SCN is not justified on the ground that license condition 6.5.1 of the license and regulation 4(2) of the QoS Regulations makes it obligatory upon the licensee to meet or exceed the quality of service threshold described in Appendix-3 at all times. It is also relevant to mention here that the survey was conducted in the areas where the network of the licensee was available.

4.4 The assertion of the licensee that there exist Transient Issues on other operator shared sites and sudden increase of national grid outages too resulted into failure events in the surveyed areas is untenable and even tantamount to admission on the part of licensee for the provision de-graded services. It is the sole responsibility of the licensee to ensure the adequate power back up on the site. Electricity shortfall is common and routine phenomenon through Pakistan. In addition, the provision of low graded services is not justified in the guise of occurrence of technical issues on the shared sites.

4.5 Furthermore, under Appendix-III "Quality of Service" of the license, the licensee is solely responsible for meeting all PTA's regulations on QoS and relevant international standardization forum such ITU, 3GPP and ETSI etc. Regulation 6 (10) of the QoS Regulations states that the Authority shall measure the performance of the Licensee through drive tests as specified in Annex-A i.e. "Drive Test/Survey Measurement Methodology" to these regulations.

4.6 The objections of the licensee on the survey methodology including sample size, unilateral survey is untenable. As far as conducting unilateral survey, it is relevant to point out here that regulation 6 (1) & (2) of the QoS regulations empowers the Authority to conduct survey with or without the representative of the licensee. In respect of sample size, it is pertinent to mention here that the licensee is under a continuous obligation at all times to meet or exceed the quality of service standards described in Appendix -3 in accordance with clause 6.5.1 of the license.

4.7 The assertion of the licensee as communicated vide email 10th December, 2021 that it took all reasonable and prudent measures and steps to provide QoS as per KPIs provided in the License do not substantiate the claim of the licensee insofar as re-

verification survey in Two (02) cities namely, Mardan and Mastung in Q2 of 2022 revealed non-compliance of six (06) QoS KPIs. The re-survey results are as under:

City Name		Mardan	Mastung
Parameter	Target		
No. of Voice Calls	-	476	451
No. of SMS	-	456	440
No. of Data Session – 3G	-	227	210
No. of Data Session – 4G	-	229	210
Key Performance Indicators	Threshold	Results	
Network Accessibility	>99%	99.96%	99.98%
Call Setup Success Rate	> 98%	95.38	82.26%
Call Connection Time (Seconds)	≤ 7.5	6.54	5.76
Call Completion Ratio	> 98%	99.56%	97.57%
Mean Opinion Score	≥ 3	3.14	3.09
ISHO for CS Voice (Only)	≥ 98%	100%	100%
RAB Setup Success Rate (3G)	> 98%	100%	99.03
SMS Success Rate	> 99%	92.32%	98.64%
SMS End to End Delivery Time (Seconds)	≤ 12	5.3	4.98
Data Throughput -HTTP Download (3G)	≥ 256kbps	1543.82	2227.76
Signal Strength RSCP (3G) of minimum	-100dBm with 90% Confidence Level	-64.8	-68.7
		100%	100%
Data Throughput - HTTP Download (4G)	≥ 2Mbps	1.12	7.12
Signal Strength RSRP (4G) of minimum	-100dBm with 90% Confidence Level	-80.6	-80.3
		94.04%	98.32%

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 (Private) limited has failed to comply with 6 x KPIs in 2nd Quarter 2022 survey in Two (02) cities measured during the re-verification survey thus thereby levies a fine to the tune of Rs.6,000,000/- (Rupees six million) in respect of non-compliant KPIs.

5.2 The Authority hereby directs the licensee to deposit Rs.6,000,000/- (Rupees six million) within one (01) month of the issuance of this Order and also improve the service quality to meet or exceed the target value of QoS parameters as per the license standards and QoS Regulations.

5.3 In case of failure to comply with para 5.2 above, legal proceeding will be initiated against the licensee as per applicable Law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 2nd day of January, 2023 and comprised (09) pages only.