



Government of Pakistan  
**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS, F-5/1, ISLAMABAD**

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

No: PTA/Fin/NGMS/Telenor Pakistan/1390/2014/28

Show Cause Notice:	1 <sup>st</sup> June, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	12 <sup>th</sup> October, 2021

**Panel of Hearing:**

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

**The Issue:**

*“Late Payment Additional Fee USD 30,246,133 on account of delay in making payment of License Renewal Fee”*

**Decision of the Authority**

**1. Brief facts of the case:**

1.1 This order shall dispose of Show Cause Notice (“SCN”) PTA/Finance/NGMS/Telenor Pakistan/1390/2014/128 dated 1<sup>st</sup> June, 2020 issued to Telenor Pakistan (Pvt.) Ltd. (“licensee”) requiring therein to pay Late Payment Additional Fee (“LPAF”) USD 30,246,133 (*US Dollar thirty million two hundred forty six thousand and one hundred and thirty three only*) on account of delay in making payment of license renewal fee that was due for payment on 26<sup>th</sup> May, 2019.

1.2 Upon expiry of license, the licensee was under an obligation to renew the license and make payments on account of renewal of license fee. However, the licensee instead of renewing its license and making payment preferred to file a Writ Petition No. 1751 of 2019 before the Honorable Islamabad High Court. The honorable court remanded the case back to the Authority for passing a speaking order. Accordingly, the Authority after providing a fair opportunity of hearing decided the matter on 22<sup>nd</sup> July, 2019 and the licensee was directed to pay renewal fee with effect from 26<sup>th</sup> May, 2019. For reference, operative part of the Authority’s order is reproduced below:

“6.1 In view of the foregoing discussion, the Authority passes the following order:

- a. Fee for renewal of license shall be US \$ 39.5 million per MHz for frequency spectrum of 900 MHz and US\$ 29.5 million per MHz for frequency spectrum of 1800 MHz;
- b. License No. MCT-01/RBS/PTA/2004 dated 26<sup>th</sup> May 2004 will be renewed with effect from 26<sup>th</sup> May 2019 for a period of further fifteen (15) years, on technology neutral basis, subject to payment of renewal fee to be calculated in accordance with per MHz price as provided at para 6.1(a) above;

- c. *The payment terms for the renewal fee shall be 100% upfront or 50% upfront with remaining 50% in five (5) equal annual installments on LIBOR plus 3%. The payment shall be made in USD or with the option to pay in equivalent Pak Rupees calculated at the market exchange rate at the time of payment;*
- d. *The upfront payment as given in para 6.1 (c) above shall be paid on or before 21-08-2019. In case of non-payment of upfront fee as required, the license shall stand expired;*
- e. *All fees and other charges as provided on part 4 of the license shall apply in a similar manner to the renewed license from its effective date i.e. 26<sup>th</sup> May 2019;*
- f. *The terms and conditions relating to enhanced quality of service and coverage of network shall be finalized in line with applicable regulatory practice and 2015 Policy after consultation with the Licensee on or before 21-08-2019;*
- g. *In case, the Licensee opts for non-renewal of its License, it shall pay on pro rata basis of the renewal fee as mentioned in para 6.1 (a) along with all other applicable fee and other charges as provided in Part 4 of the license commencing from 26-05-2019 till the date of withdrawal/vacation of radio frequency spectrum."*

1.3 However, the licensee being aggrieved from the decision of the Authority filed a First Appeal against Order (F.A.O) No. 162 of 2019 before the Honorable Islamabad High Court. The Honorable Court vide order dated 19<sup>th</sup> July, 2021 dismissed the appeal.

1.4 It is relevant to point out that in light of court order dated 21<sup>st</sup> August, 2019 passed in FAO No. 162 of 2019 the licensee deposited amount on 3<sup>rd</sup> September, 2019 on account of license renewal fee which was due and payable on 26<sup>th</sup> May, 2019. As a result of delay in making payment a demand note dated 30<sup>th</sup> September, 2019 followed by corrigendum dated 2<sup>nd</sup> October, 2019 for payment of USD 30,246,133 as LPAF was issued. However, the licensee did not pay the same. As a consequence thereof, a SCN dated 1<sup>st</sup> June, 2020 was issued to the licensee requiring therein to remedy the contravention by making payment of USD 30,246,133 within fifteen days of the issuance of SCN and to explain in writing within thirty days of the notice as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the license under section 23 of the Act.

1.5 The licensee did not respond to SCN. The licensee vide letter dated 2<sup>nd</sup> September 2020 intimated that the Hon'ble Islamabad High Court, Islamabad has passed an injunctive order dated 20<sup>th</sup> August 2020 in C.M No. 564 of 2020 in F.A.O 162/2019 which is binding on the Authority, and further stated that the SCN may not be responded for being premised on the demand note dated 30<sup>th</sup> September 2019 and its corrigendum dated 2<sup>nd</sup> October 2019 which is the subject of the aforesaid C.M.

1.6 Later on, upon dismissal of F.A.O No. 162 of 2021 by the Honorable Islamabad High Court the matter was fixed for hearing on 12<sup>th</sup> October, 2021 before the Authority. The licensee, one day before the hearing, vide letter dated 11<sup>th</sup> October, 2021 submitted that in light of judgement of the Hon'ble Islamabad High Court passed in W.P No. 2083/2020 nothing was outstanding prior to 21<sup>st</sup> August, 2019 that is, the date stated in Authority's own order (para 6(1)(d)) determining the license fee on remand by the High Court. On remand, the previous order of the Authority impugned in W.P 1751/2019 stood set aside. Resultantly, the license fee, to all intents and purposes, was



determined for the first time by the Authority vide order dated 22<sup>nd</sup> July 2019, which stood suspended vide order dated 21<sup>st</sup> August 2019 of the Islamabad High Court giving an extended timeframe for payment, and the payment was made accordingly.

## **2. Hearing before the Authority:**

2.1 On the date of hearing i.e., 12<sup>th</sup> October, 2021, Mr. Muhammad Irshad Advocate Supreme Court of Pakistan, Mr. Hader Latif Sandhu, Director Legal Affairs, Mr. Raza Zulfiqar Naqvi, VP, Mr. Haseeb Sheikh, Head of Interconnect, Mr. Zain Ali, Manager Legal Affairs, Mr. Syed Ali Yasir, SM Legal Affairs and Mr. Ali Aamer Khan, Regulatory attended the hearing on the behalf of licensee.

2.2 In addition to the arguments and pursuant to the hearing, the licensee filed written submissions vide letter dated 21<sup>st</sup> October 2021. The crux of the submissions is as under:

2.2.1 The licensee contented that late payment additional fee as mentioned in the Demand Note dated 30.09.2019, its Corrigendum dated 2.10.2019 and SCN does not accrue as 50 % of the initial license fee, which is condition of the renewal of the license, is paid well within time. In this regard, the licensee made reliance on clause 1.2.3(a) of the license which stipulates that “license is renewed when the order to renew the license is passed along with its terms and conditions” which order in the instant case was passed on 21.07.2019 and conditions i.e. price and payment date were provided as 21.08.2019. In the license, payment of Initial license fee is required to be paid before issuance of license, however, in case of renewal Initial license fee was required by the Authority to be paid by 21.08. 2019. The payment date was extended to 5.09.2019 by IHC vide order dated 21.08.2019 in F.A.O No. 162/2019. The licensee asserted that payment was made under protest on 03.09.2019 well within time, therefore, late payment additional fee as mentioned in the SCN is not applicable because payment of initial license fee for renewal of license was made within time provided in license renewal order dated 22.07.2019 as extended by IHC till 05.09.2019.

2.2.2 The licensee expressed that late payment additional fee is payable only on late payment of subsequent installments of initial license fee or annual license fees and is not applicable to the first installment of initial license fee because license is only renewed upon payment of 50% of initial license fee. The licensee emphasized upon clause 4.4.2 of the license which provides “In addition to any other remedy available to the Authority, late payment of all fees including initial license fee shall incur an additional fee calculated at the rate of 2% per month on the outstanding amount, for each month or part thereof from the due date until paid”. The licensee enunciated that clause 4.4.2 only becomes operative once 50% of initial license fee is paid, which date in the instant case is 03.09.2019, and the license stands renewed or is agreed by the Authority to renew, therefore, all payment which becomes due after the license is renewed or agreed to be renewed, may attract late payment additional fee as envisaged in clause 4.4.2. The licensee further submitted that maximum consequence of non-payment of 50% initial license fee is that until such date license was not renewed and stands expired, however, in the instant case upon under protest payment of 50% initial license fee by the licensee, the license stands renewed or agreed to be renewed on payment of 50% initial license fee on 3.09.2019 with effect from 26.05.2019 as per the license renewal order dated 22.07.2019 passed by the Authority.



2.2.3 The licensee submitted that late payment additional fee could have been applicable after initial license fee is determined by the Authority and the licensee is required to make such payment, and not before such determination. The licensee contented that by any interpretation, no fee was payable until the initial license fee was determined by the Authority under license renewal order dated 22.07.2019 and the licensee was required to pay such initial license fee by 21.08.2019, which could have become due date as per clause 4.4.2 of the license. The licensee articulated that license renewal order dated 22.07.2019 passed by the Authority was suspended by IHC vide order dated 21.08.2019 in F.A.O No. 162/2019 subject to the condition that the licensee shall deposit within two weeks i.e. 5.09.2019 initial license fee in either of the options provided in license renewal order dated 22.07.2019. Resultantly, the license stood renewed or agreed to be renewed on 03.09.2019 on under protest payment of 50% initial license fee, which in the absence of order dated 21.08.2019 passed by IHC, would have expired on 21.08.2019 as per terms of the license renewal order dated 22.07.2019 and after renewal or agreement to renew the license on 30.09.2019, any payment after the due date may attract late payment additional fee as per clause 4.4.2 of the renewed license. The licensee made reliance on the Judgement of IHC in W.P No. 2083/2020 wherein it was held that due date would be if any and when the matter is decided against the Petitioner and demand is made to make the payment.

2.2.4 The licensee portrayed that corrigendum has assumed that 100% payment of license fee was required to be made under license renewal order dated 22.07.2019, much before even such determination i.e. 26.05.2019, which is erroneous and without lawful authority on the ground that neither 100% upfront initial license fee was payable, as it was one of the option and the licensee opted to make 50% upfront initial license fee, nor it can be assumed that such payment was due on 26.05.2019 much before such amount was even determined. The licensee enunciated that late payment additional fee is applicable under clause 4.4.2 of the license, which that additional fee calculated at the rate of 2% per month on the outstanding amount, for each month or part thereof from the due date until paid whereas the demand note and corrigendum incorrectly has calculated late payment additional fee for a period of 101 days, which method of calculation is even not provided in clause 4.4.2 of the license.

### **3. Findings of the Authority:**

Matter heard and record perused. After careful examination of the record and hearing submissions of the licensee at length, findings of the Authority are as under:

3.1 Admittedly, there is no dispute with regard to effective date of renewal of license. As per decision of the Authority dated 22<sup>nd</sup> July, 2019, it has explicitly been provided that the effective date of renewal of license will be 26<sup>th</sup> May, 2019. However, the licensee has failed to make payment as per decision of the Authority.

3.2 The said order of the Authority clearly provides payment mechanism and due date of the renewal of license. Para 6.1 (c) of the said order provides that all fees and other charges as provided in Part 4 of the license shall payable in a similar manner to the renewed license from its effective date i.e., 26<sup>th</sup> May, 2019.

3.3 The licensee's contention that there was no communication from PTA after 9<sup>th</sup> May, 2019 till 22<sup>nd</sup> July, 2019 whereby the licensee was intimated the license Renewal Fee. It was the first time that PTA communicated the license Renewal Fee



vide its order dated 22<sup>nd</sup> July, 2019. The Renewal license template was shared on 19<sup>th</sup> August 2019 and even that did not contain any mention of fee. PTA communicated fee in license template for the first time on 17<sup>th</sup> September, 2021. In this regard, it is clarified that the licensee was required to make the payment on certain date which was due and payable with effect from 26<sup>th</sup> May, 2019. Thus, without making payment of renewal license fee, the licensee cannot be allowed to provide licensed services. Accordingly, while passing order dated 22<sup>nd</sup> July, 2019 effective date of renewal of license was mentioned.

3.4 It is also relevant to point out that the Honorable Islamabad High Court vide its order dated 21<sup>st</sup> August, 2020 in FAO No. 162 of 2019 also held that in case the Authority intends to proceed against the company for the recovery of charges on account of delay then it may issue Show Cause Notice but final order shall not be passed. Most importantly, the Honorable Islamabad High Court has upheld the Authority's order dated 22<sup>nd</sup> July, 2019 and dismissed appeal filed by the licensee. Thus, the licensee is under an obligation to make payment on account of LPAF.

3.5 With regard to renewal fee, the Honorable Islamabad High Court has discussed this issue in detail. For ready reference relevant paras of the order are reproduced below:

*"9. It is noted that frequency spectrum is covered in the expression "scarce resource" and defined under section 2 (qc) of the Act of 1996. The scheme of the Act of 1996 clearly shows the allocation of scarce resource and determination of its price has to be made in a transparent manner. A licensee is therefore, under an obligation to pay the fee or price for the allocated frequency spectrum regardless of its actual use. The August Supreme Court in the case titled "Pakcom Limited and others Vs Federation of Pakistan other" [PLD 2011 SC 44] has elaborated the nature of frequency spectrum and the fee/ price for its use. It has been held that such fee is paid because frequency spectrum is owned by the state and is one of its precious scarce resources.*

*10. The dispute raised by the petitioner companies is regarding determination of the price for the use of frequency allocation for the purposes of renewal of the licenses. The Federal Government considered the proposal sent by the Authority and determined the price for the right to use the frequency spectrum vide policy directive, 09-05-2019. The determination was based on the bench mark of the bids received during the last held public auction. The determination of the price was obviously to be made on the basis of the market price of the right to use the scarce resource at the time of renewal of licenses. The most effective mode for determination would have been auctioned of the scarce resource through a transparent bidding process.*

*11. There is nothing on record to show that licenses could be renewed on the basis of a price less than the prevailing value of the right to use the scarce resource. The mode of determination adopted by the Federal Government was reasonable, just and in public interest. There is no force in the argument advanced by the learned counsel for the petitioner companies that the delay in determination was in violation of*

Dated: 28th Feb, 2022

*policy and the terms of the licenses. The delay was also attributable to the petitioner companies. The policy directive of Federal Government, dated 09-05-2019, was reasonable and fair determination of the value of use of scarce resource for the purposes of renewal of license. The learned counsels were asked whether the petitioner companies were willing to participate in an international bidding process so as to determine the actual prevailing price for the right to use of the scarce resource? They prefer not to respond the question. The learned counsel despite their able assistance were not able to persuade this court that the licensees would be renewed on the terms and condition less favorable to the public interest or the exchequer. The impugned determination of the Authority is well reasoned and does not suffer any legal infirmity requiring interference.*

*12. For the above reason, these appeals and constitutional are without merit and therefore accordingly dismissed."*

#### **4. Order**

4.1 Keeping in view the above-mentioned facts coupled with the available record and court order, the Authority has reached to the conclusion that demand note dated 30<sup>th</sup> September 2019 and corrigendum dated 2<sup>nd</sup> October 2019 requiring the licensee to pay late payment additional fee amounting to USD 30,246,133 (*US Dollar thirty million two hundred forty six thousand and one hundred and thirty three only*) has validly been issued. Therefore, the licensee is hereby directed to make payment of the said outstanding dues within seven (07) days from the date of receipt of this order.

4.2 In case of non-compliance of order at para 4.1 above, the matter will be processed further as per applicable law without any further notice.

**Maj. Gen. Amir Azeem Bajwa (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

**Dr. Khawar Siddique Khokhar**  
Member (Compliance & Enforcement)

Signed on 28th day of February, 2022 and comprises of (6) pages only.