

Enforcement Order under section 23 of Pakistan Telecommunication (Re-organization) Act, 1996 against Pakistan Mobile Communications Limited (PMCL)

No. PTA/Enf-Wireless/Mobile QoS/Verification/136/2022-1/397

Show Cause Notice: 9th June, 2022
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 13th October, 2022

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 Brief facts of the case are that Pakistan Mobile Communications Limited (PMCL) (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, license No. NGMS-06/WLL&M/PTA/2017 dated 29th June 2017 and license No. MCT/02/Wireless/PTA/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 2021 (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, conducted a survey in 3rd quarter of 2021 at ten (10) cities and eight (08) roads. Detail is as under:

Ten Cities: i) Jhang, ii.) Sialkot, iii.) Vehari, iv.) Dera Ghazi Khan, v.) Bannu, vi.) Dera Ismail Khan, vii.) Thatta, viii.) Tando Allah Yar, ix.) Korangi, x.) Malir.

Eight Roads: i) Lahore to Jang, ii.) Lahore to Sialkot, iii.) Multan to Vehari, iv.) Multan to Dera Ghazi Khan, v.) Peshawar to Bannu, vi.) Bannu to Dera Ismail Khan, vii.) Karachi to Thatta; viii.) Karachi to Tando Allah Yar.

1.4 During the survey, it was identified that QoS results were inconsistent with the parameters as laid down in the license and other enabling regulatory provision(s). Accordingly, PTA vide letters dated 20th August, 15th September and 23rd September 2021 shared the survey results with the licensee and required it 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.

1.5 In addition to the above, the licensee was also required to submit a detailed report of root cause analysis of degradation in QoS. The licensee vide letters dated 18th September, 14th October and 22nd October 2021 submitted compliance report and claimed that remedial measures were taken and QoS KPIs have been improved up to the desired licensed/Regulations threshold during the re-drive conducted by the licensee.

1.6 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 during 1st Quarter 2022 at three (03) selected cities namely, Dera Ismail Khan, Sialkot and Tando Allah Yar. However, contrary to the claim of the licensee, the re-verification survey revealed degraded QoS KPIs at the said cities.

1.7 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 on 9th June, 2022 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.

1.8 The licensee filed interim reply/compliance report dated 24th June, 2022 and submitted that it has analyzed the network at the non-compliant identified cities with regard to shared survey results/logs. Additionally, the licensee stated that its network at the surveyed cities has been optimized within claimed coverage area with available resources/ infrastructure and new sites are also deployed where feasible to improve the services at the said locations/areas.

1.9 In addition to interim reply, the licensee vide letter dated 7th July, 2022 submitted reply to the SCN. For ready reference crux of relevant submission made by the licensee in reply to SCN is given below:

- (a) *“The SCN is issued on the basis of unilateral survey results and particularly PTA has not provided the survey results for the Quarter 1, 2022 to the licensee on compliance with regulation 10(3) of the regulations and regulations 6(6) & 6(7) of the QoS regulations. Therefore, the licensee deprived from taking remedial measures. Furthermore, since these surveys were conducted after promulgation of new QoS regulation, 2021 which*

replace earlier QoS regulations, therefore, results of these surveys were to be provided to the licensee for identifying the causes and to take remedial measures, which requirement is not fulfilled.

- (b) Remedial measures have been taken by upgrading the level of service by upgrading the exciting sites and by deploying two (02) additional sites (i.e., ALA 5954 & ALA 5771) in Tando Allah Yar which were recently on-aiored (June, 2022 & April, 2022) after the survey, which has further improved overall city KPIs.*
- (c) The Licensee conducted Drive Test of the Dera Ismail Khan, Sialkot and Tando Allah Yar in June and July of 2022 and found no anomaly or shortfall in this regard on account of QoS KPIs. The CSSR, MoS and SMS Success Rate were found at par with license conditions.*
- (d) Potential external interferences in frequencies, internal and external factors at the sites, electricity or fueling delays, power outages, weather issues, etc. or technical or operational difficulties being faced by the operators while running & maintaining the Network which sometimes might cause or lead to temporary outages on any particular site or a hub site affecting overall service in any particular area or time, and can also be resolved in timely manner by identifying the causes through coordination. If surveys are conduct in such like situations, might be result would also be bit different.*
- (e) The reasons for the Authority sudden shift to a new tool are not transparently visible. The Authority's power to choose a tool is conditioned by an equitable obligation of the Authority and legitimate expectations of the Licensee that the need to move to a new tool must be premised on objective and valid reasons and not be the result of an arbitrary and subjective choice that tends to favour a particular brand without compliance with public procurement legislation), that the choice of a new tool must not take the Licensee by surprise by departing from a decade old settled choice of a QoS tool, and must also inspire confidence that the new tool and its measurement metrics are consistent with the Licensee's system and network design that is within the knowledge of the Authority.*
- (f) The SCN is premature as the Authority, while issuing it, has not completed the requirement provided in applicable new regulations promulgated on 9th September, 2021. In accordance with regulation 6(7) of the QoS regulations, 30 days along with inspection report are to be provided to the licensee in order to take remedial measures and submit compliance report. Since, these survey of Q1 ,2022 were done after promulgation of new regulations, therefore, the due process given QoS regulations was to be followed.*
- (g) The licensee submitted that while citing section 4 (d) of the Act it appears that the Authority chose to focus on the words "high quality, efficient",*

while ignoring the expression “cost-effective and competitive”. The said function of the Authority is subject to section 6(a) of the Act that the rights of the licensee are duly protected. A significant right of the licensee is that it is not to be subjected to obligations or measures or judged on criteria not set out in its license. This right of the licensee stands breached in the SCN on several score, including the following:

i) **Measurement for 30 days for QoS KPIs enforcement:**

The SCN is based on a QoS survey that measures the QoS KPIs in a survey of a few days and a few 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 license

ii) **No QoS KPIs enforcement on a limited-area basis:**

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.

iii) **QoS KPIs enforcement is subject to the prudence and reasonableness test:**

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 the KPIs. The prudence and reasonableness test links to the expression “cost-effective” in section 4(d) of the Act. The prudence and reasonableness test negate 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 prudence and reasonable cost. 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.

iv) **The application of the KPIs is subject to technical limitation of cellular networks recognized by international technical bodies:**

- a. 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. No minimum standards for quality and grade of service and obligation ancillary thereto can be enforced if not already set out in the licenses.

- b. The right reserved by the Authority to conduct surprise checks does not mean secret surveys. The word “without notice to” or “without representative of” the Authority in the cited provisions are coupled with and immediately followed by the licensee’s obligations to cooperate with the Authority, and import knowledge of the licensee for the intended surveys. The element of “surprise” only means “sudden or unexpected”, and does not mean “secret”; a “surprise” occurs only when the target acquires knowledge thereof. The licensee’s knowledge of the survey, irrespective of the element of surprise, is to ensure the impartiality, transparency, fairness and authenticity of the survey results, which have been comprised in relation to the said “independent” survey.*
- c. The obligation to meet or exceed the quality of service standards is conditioned by any premised on a time frame of each calendar month, that is, the survey is to be based upon readiness taken over an entire month and not a lesser period (in Q 1, 2022 survey as shot as 1 or 2 days), and that the test of prudence and reasonableness applies in judging the licensee’s compliance with the QoS KPIs. The survey results accompanying the Notice 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 Notice is also invalid and must therefore be discharged / withdrawn.*

2. Hearing before the Authority:

2.1 In order to proceed further, the matter was fixed for hearing on 13th October, 2022 before the Authority. Mr. Momin Ali Khan (Legal Counsel), Mr. Mudassir Hussain (VP CRA), Mr. Zulfiqar Ali (Stream Head Reg. Operation), Ms. Fariha Khan (Manager Legal) and Mr. M. Asif Hameed (Expert QoS) attended the hearing. Legal Counsel reiterated the same as submitted in reply to the SCN and pointed out that the licensee is always complying with the regulatory laws and license terms and condition in true letter and spirit.

3. Findings of the Authority:

After careful examination of record and hearing the arguments advanced by the licensee, following are the findings of the Authority:

3.1 The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. 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.

3.2 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, clause 23.7 of part 6 of the Rules, regulation 10 of the Regulations and regulation 8 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.

3.3 As per License condition 6.5.1, the licensee is required at all the time to meet or exceed the Quality of Service standards described in Appendix-III of the license and QoS Regulations. However, as per the aforesaid QoS survey, the services of the licensee were found non-compliant of the QoS parameters laid down in the license and the QoS Regulations. It would be pertinent to mention here that as per clause 3.1.1 of the license, the license is subject to the terms and condition contained in the license and to the provisions of Act, rules and regulations made thereunder by the Authority.

3.4 The licensee vide letters dated 18th September, 14th October and 22nd October, 2021 intimated that remedial measures have been taken and QoS KPIs and improved up to the desired licensed/regulations threshold. However, as a result of carrying out re-survey by PTA in three (03) cities namely, Dera Ismail Khan, Sialkot and Tando Allah Yar in Q1 of 2022, it has been found that the licensee could not meet seven (07) QoS KPIs. The re-survey results are as under:

City Name		Tando Allah Yar	DI Khan	Sialkot
Key Performance Indicators	Threshold	Results		
Network Accessibility	>99%	99.95%	100%	100%
Service Accessibility	> 98%	93.97%	96.85%	97.61%
Call Connection Time (Seconds)	≤ 7.5	6.13	6.20	6.42
Call Completion Ratio	> 98%	98.93%	99.53%	99.51%
Mean Opinion Score	≥ 3	2.87	3.28	3.16
ISHO for CS Voice (Only)	≥ 98%	100%	100%	100%
RAB Setup Success Rate (3G)	> 98%	100%	100%	100%

SMS Success Rate	> 99%	99%	98.63%	96.19%
SMS End to End Delivery Time (Seconds)	≤ 12	3.05	3.14	5.02
Data Throughput -HTTP Download (3G)	≥ 256kbps	1054.34	2054.03	2098.40
Signal Strength RSCP (3G) of minimum	-100dBm with 90% Confidence Level	-65	-70.8	-63.9
		100%	99.88%	100%
Data Throughput - HTTP Download (4G)	≥ 2Mbps	13.84	12.27	9.16
Signal Strength RSRP (4G) of minimum	-100dBm with 90% Confidence Level	-80	-82.6	-78.2
		98.75%	95.87%	99.23%

3.5 While considering the observation of the licensee with regard to survey areas, it is clarified that the licensee has not defined claimed coverage area anywhere. The survey was carried out within the areas where the licensed services were available as evident for Network Accessibility within threshold. In addition, in accordance with applicable regulatory laws, the licensee was given a fair opportunity to remove the shortfall identified in the inspection report for any particular city has been given on account of only one test. The operator is, therefore, required to meet the QoS accordingly.

3.6 The licensee at all times is required to meet or exceed the thresholds defined in licenses. However, KPIs noted during re-survey in three 03 cities were found without the desired thresholds. Additionally, MOS also found degraded at Tando Allahyar. In so far as the conduct of unilateral surveys is concerned, the Authority, as per Regulation 6(1&2) is empowered to conduct survey either independently or jointly. After carrying out survey, log files were shared along-with survey results for analysis and subsequent remedial measures. Despite providing opportunity for taking remedial measures in order to remove short falls so as to meet the threshold of KPIs of QoS, the licensee has failed to comply with the same.

4. Order:

4.1 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 comply with the Quality of Services KPIs in 3rd Quarter 2021 survey in 10 cities. More so, as a result of re-verification survey to ascertain the compliance of KPIs for QoS as conducted in three cities, the licensee has also been found non-compliant with regard to observing parameters of QoS., Thus considering the persistent contravention of license terms and conditions, the Authority hereby imposes a fine to the tune of Rs.7,000,000/- (Rupees Seven Millions) to be paid within one month from the date of receipt of this enforcement order.

4.2 The Authority hereby further directs the licensee to improve the service quality to meet or exceed the target value of QoS parameters as per the license standards and QoS Regulations.

4.3 In case of failure to comply with para 4.1 above, legal proceeding will be initiated against the licensee as per applicable Law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 27th day of December, 2022 and comprises of (8) pages only.