



**Enforcement Order under section 23 of Pakistan Telecommunication  
(Re-organization) Act, 1996 against Pakistan Telecom Mobile Limited (PTML)**

No. PTA/Enf-Wireless/Mobile QoS/Verification/136/2022-III/396

Show Cause Notice: 9<sup>th</sup> June, 2022  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 5<sup>th</sup> 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 Precisely stated facts of the case are that Pakistan Telecom Mobile Limited (PTML) (the “licensee”) is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. MCT-06/WLL&M/PTA/2014 dated 8<sup>th</sup> April 2014, license No. NGMS-03/WLL&M/PTA/2014 dated 21<sup>st</sup> May 2014 and license No. NGMS-07/Wireless/PTA/38/2021 dated 15<sup>th</sup> September 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 3<sup>rd</sup> quarter of 2021 at **ten (10) cities** i.e., Jhang, Sialkot, Vehari, Dera Ghazi Khan, Bannu, Dera Ismail Khan, Thatta, Tando Allah Yar, Korangi, Malir and **eight (8) roads** i.e., Lahore to Jhang, Lahore to Sialkot, Multan to Vehari, Multan to Dera Ghazi Khan, Peshawar to Bannu, Bannu to Dera Ismail Khan, Karachi to Thatta and Karachi to Tando Allah Yar.

1.4 During the survey, it was identified that QoS results were not in accordance with the parameters as laid down in the license and other applicable regulations. Accordingly, PTA vide letter dated 20<sup>th</sup> August, 2021, 15<sup>th</sup> September, 2021 and 23<sup>rd</sup> September, 2021 shared results with the licensee and required 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. In response, the licensee submitted compliance a report vide letter dated 13<sup>th</sup> September 2021, email dated 15<sup>th</sup> October 2021 and 23<sup>rd</sup> October 2021 claiming therein that remedial measures have been taken and QoS KPIs are improved up to the desired licensed/Regulations threshold during the re-drive conducted by the licensee.

1.5 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 1<sup>st</sup> Quarter 2022 at three (03) selected cities namely, i) *Dera Ismail Khan*, ii) *Sialkot* and iii) *Tando Allah Yar*. However, contrary to the claim of the licensee, the re-verification survey revealed degraded QoS KPIs at the said cities.

1.6 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 9<sup>th</sup> 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 to 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.

1.7 In response to SCN, the licensee vide letter dated 24<sup>th</sup> June 2022 submitted a compliance report and contented that as per PTA's independent QoS survey which was conducted in Q3-2021, all KPIs in Dera Ismail Khan and Sialkot were already in conformity. In addition, as per the re-verification survey conducted in 2022, non-conformance were highlighted in Dera Ismail Khan, Sialkot and Tando Allah Yar. Analysis of the log files for CSSR non-conformance in Sialkot, MOS non-conformance in Dera Ismail Khan and 4G Signal Strength non-conformance of Tando Allah Yar from PTA's 2022 re-verification testing is still in progress and will be included in final response to the SCN.

1.8 The licensee further submitted that Dera Ismail Khan's non-conformance, highlighted by PTA in Q3 2021 was not due to network issue, but due to methodology of conducting 4G testing in unclaimed 4G coverage areas at the time of testing. Lastly, it was also shared in the aforementioned response that excluding the route which was outside the 4G/LTE claimed coverage area and including only the testing inside the 4G claimed coverage area, the KPI 4G/LTE Signal Strength was in conformance with a value of 93%.

1.9 The licensee vide letter dated 26<sup>th</sup> July 2022 filed a reply to SCN. As per SCN reply the licensee asserted that it is fully committed to conform to its license conditions, especially the QoS KPIs envisaged in the license. In support of its claim, the licensee provided the detailed technical analysis on Tando Allah Yar, DI Khan and Sialkot 2022 Re-verification survey of non-conformance. Additionally, the licensee also requested for an opportunity of personal hearing with the spirit to further appraise the Authority to ensure full compliance and steps which have been taken to ensure meeting the standard of QoS KPIs of the license.

## 2. Hearing before the Authority:

2.1 In order to proceed further, the matter was fixed for hearing before the Authority on 5<sup>th</sup> October 2022. However, on 4<sup>th</sup> October 2022, the licensee requested for rescheduling the hearing in light of lack of proper composition of the Authority as mandated under the law and upheld by Supreme Court. The Authority having been defined by section 3 (2) under the Act provides that the Authority constitute three members, however, presently the Authority requires a third Member to be appointed as the position fell vacant after the retirement of a Member in April, 2022. In view of the above law laid down by the Honorable Islamabad High Court order dated 16<sup>th</sup> December, 2016, it was held that:

*“the authority comprises of three members, therefore, in light of decision of the Honorable Lahore High Court in National Silk and Rayan Mills verses federation of Pakistan supra, it is the legitimate expectation of every person whose matter is being heard by the Authority that the same shall be heard and decided by the authority comprising all three members”.*

2.2 The licensee also highlighted that the aforementioned order has been upheld by the Apex Court vide order dated 25<sup>th</sup> October 2019. On the basis thereof, the licensee sought rescheduling of the hearing till proper composition of the Authority.

2.3 Mr. Usman Malik (SM Regulatory) and Ms. Saba Tariq (AM Legal-Regulatory) attended the hearing before the Authority on 5<sup>th</sup> October 2022. During the hearing, the representative of the licensee reiterated the same stance as submitted in reply to SCN and letter dated 4<sup>th</sup> October, 2022.

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

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:

#### **3.1.1 Composition of the Authority:**

- a. For the purpose of hearing and deciding the matter in hand, it is necessary to address the objection of the licensee with regard to lack of proper composition of the Authority. The licensee referred two court cases decided by the Honorable Courts i.e. i) titled Worldcall Telecom Limited Vs Pakistan Telecommunication Authority dated 16<sup>th</sup> December, 2016 (announced in open court on 10-3-2017); and ii) the August Supreme Court of Pakistan in Civil Appeal Nos.1107 to 1109 of 2018 and Civil Appeals No. 205,207 & 209 to 212 of 2016 dated 25<sup>th</sup> October, 2019.
- b. For the purpose of record, relevant paras of the court orders are reproduced below:
  - i. Paras 9, 10 and 11 of the judgement passed by the Honorable Islamabad High Court in F.A.O No. 37 of 2012 titled **Worldcall Telecom Limited Vs. Pakistan Telecommunication Authority** are as under:

“9. The collective reading of sections 3(2), 3(8), 3(9) and 3(10) shows that the Authority comprises three members and the Chairman is selected from amongst them. The Chairman has the power to take administrative actions and other decision on matters provided in Section 10. Other than that the decision of the Authority is to be by majority, however, notwithstanding sub section 8 any act, proceeding or decision of the Authority shall not be invalid on the basis of vacancy in the Authority or defect in the constitution of the Authority. In this behalf admittedly at the relevant time all three members of the Authority were in office, therefore, there does not arise the question of vacancy in the Authority. The next question is whether there was a defect in the constitution of the Authority in light of the fact that only two persons heard the matter and decided the same vide impugned orders, despite all members being available. The answer to the said question in light of the above judgments of the Lahore High Court is no; the defect in the constitution of does not mean that at the whim and choice of the Chairman only one or two Members hear the matter and claim validity of the Order passed on the basis of Subsection 10 of Section 3. The defect in the constitution would mean that if for instance due to any reason the requirements as provided in section 3(2) are not complied with. Even otherwise if in every case where quasi-judicial powers are being exercised by the Authority and the same is done by one or two members, the said practice shall make section 3 (9) redundant and redundancy cannot be attributed to any provision of the statute.

10. The Authority comprises three members, therefore, in light of decision of the Honorable Lahore high court in National Silk & Rayon Mills versus Federation of Pakistan supra, it is the legitimate expectation of every person whose matter is being heard by the authority that the same shall be heard and decided by the Authority comprising all three members.

11. In view of above facts and circumstances and the legal position, the protection of validity afforded under Section 3(10) of the Act does not extend to the orders impugned in the instant appeal.”

- ii. The Authority, being aggrieved from the above referred court order filed appeal before the August Supreme court of Pakistan. The Honorable Supreme Court passed the following order:

**“Order**

**Civil Appeals No. 1107 to 1109 of 2018:** We have heard the learned counsel for the parties at some length and have gone through the impugned judgment of the High Court, the record of the case and the law on the subject. We are not inclined to interfere in the impugned judgment and are of the view that it does not warrant any interference. As a consequence, the instant appeals are dismissed.

2. **Civil Appeals No. 205, 207 & 09 to 212 of 2016:** As far as these appeals are concerned, they are disposed of along with the listed CMAs, for the reasons given above, with the direction that the Authority (three members) will hear the matters afresh and decide the same within a period of fortnight from the date of receipt of this order. The impugned judgment of the Lahore High Court dated 23.11.2015 has not been examined by us on merits because these matters have been decided on the jurisdictional question of the constitution of the Authority. Therefore, the impugned judgment deciding the merits of the case, will not be treated as a precedent and will not influence the Authority while deciding the matters afresh. It is clarified that this order will have no bearing on the decisions/orders of the Authority that stand past and closed.”

- c. The Authority also filed review petition(s) before the Honorable Supreme Court of Pakistan. The Honorable Supreme Court vide order dated 1<sup>st</sup> October, 2022 disposed of the review petition. For ready reference relevant paras of the order are reproduced below:

**“Main case:**

2. Learned counsel for the petitioners submits that direction issued in the judgment of the Lahore High Court dated 23.11.2015 for a fresh hearing by the Pakistan Telecommunication Authority (“PTA”) comprising of three members has been implemented vide order dated 29.11.2019. However, learned counsel pleads that learned High Court as well as this Courts in it impugned order dated 25.2019 have not considered the effect of Section 3(9) of the Pakistan Telecommunication (Re-organization) Act, 1996 read with Regulation 44-A of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006. As the dispute in question has been resolved and settled, therefore, the point raised now is a academic import. The said point may be considered by competent court in appropriate case.

3. These petitions are disposed of having become infructuous.”

- d. Perusal of the above referred judgments passed by the Honorable Islamabad High Court reveal that since at the time of adjudication all three members were available, therefore, all members were required to hear and decide the matter. Whereas, as far as the proceedings in the instant matter are concerned, there were only two members of the Authority i.e., Chairman and Member (Compliance & Enforcement) and seat of one member was vacant. Thus, in order to address such eventualities, section 3 (10) of the Act provides as under:

**“3(10) Notwithstanding anything contained in sub-section (8), no act, proceeding or any decision of the Authority shall be invalid by reason**

**only of the existence of a vacancy in, or defect in the constitution of, the Authority”**

e. Since, position of one member was vacant, thus, by virtue of section 3 (10) of the Act, proceeding and decision cannot be considered invalid. In court case i.e., **F.AO No.108 of 2008 titled Dancom Pakistan (Pvt.) Ltd. Vs Pakistan Telecommunication Authority** passed by the Honorable Islamabad High Court, Islamabad also observed the same. For reference relevant para of the judgment is reproduced below:

“34. As regards the contention of the learned counsel for the appellant that the impugned enforcement order having been passed by the Chairman and one Member, and not by the “Authority” as defined in Section 3(2) of the 1996 Act to mean three Members, is invalid: suffice it to say that Section 3(10) of the said Act provides *inter alia* that no act, proceedings or any decision of the “Authority” shall be invalid by reason of the existence of a vacancy in, or a defect in the Constitution of the “Authority.” It is not disputed that the third Member of the “Authority” was appointed on 16.03.2009, i.e. after the impugned enforcement order was passed. Therefore, the impugned enforcement order cannot be held to be illegal solely on the ground that it was passed only by the Chairman and one Member of the Authority.

35. I have gone through the judgments in the cases of National Silk and Rayon Mills Vs Federation of Pakistan (2015 MLD 995) and SNGPL Vs OGRA (PLD 2014 Lahore 167) wherein a provision in *Pari materia* to Section 3(10) of the 1996 Act in the Oil and Gas Regulatory Authority Ordinance, 2002 was interpreted by the Hon’ble Lahore High Court. If I were to hold that the impugned enforcement order passed by the Chairman and a Member of the P.T.A was unlawful on account of the vacancy of one Member, it would not be without doing violence to the words in Section 3(10) of the 1996 Act, which clearly sets out the intent of the legislature. In the case of Pakistan Sugar Mills Association Vs Federation of Pakistan (PLD 2021 Islamabad 55), the Division Bench of this Court held as follows: -

*“44. The principles of statutory interpretation are well settled. The Court cannot recast or reframe legislation for the very reason that it has no power to legislate. The Court cannot add words to a statute or read words into it which are not there. Similarly, the Court cannot ignore words in a statute by attributing redundancy to them. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule by making structural changes or substituting words in a clear statutory provision under the guise of interpretation will pose a great risk as the changes may not be what the Legislature intended or desired. Legislative wisdom cannot be replaced by a Judge’s views.”*

36. It is not the appellant's case that the third Member had absented himself from the proceedings culminating in the impugned enforcement order. As mentioned above, the third Member of the "Authority" had not even been appointed when the impugned enforcement order was passed."

3.1.2 In light of dictum laid down in the above referred judgments, the Authority is of the view that by virtue of the section 3(10), the Authority is within the mandate of law to proceed in the instant matter and decide the issue in hand in accordance with law.

#### **4. Merits of the case:**

4.1 As far as merits of the case is concerned, it is relevant to point out that the mandate of the Authority is to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan in accordance with the applicable law. 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 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.

4.3 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 license condition No. 3.1.1, 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. Therefore, the licensee is required to meet the requirement of QoS standards as laid down in the said legal instrument.

4.4 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. Moreover, it is categorically mentioned in Appendix-III "Quality of Service" of the license against Mean Opinion Score (MOS) that, "as recommended by ITU-T and recommendations P.862.2 (PESQ), P.862.3 (POLQA) or latest ITU- T/relevant forum recommendations". The issue lies with the licensee's network that needs to be upgraded. Different codecs both narrow band and wide band are used by licensee, which are required to be enhanced and optimized.

4.5. The assertion of the licensee as communicated vide letters dated 18<sup>th</sup> September, 14<sup>th</sup> October and 18<sup>th</sup> October, 2021 that remedial measures have been taken and QoS KPIs have been improved up to the desired licensed/regulations' threshold do not substantiate the claim of the licensee as insofar no log of the re-drive test submitted to PTA. Furthermore, PTA has again carried out sample re-verification survey in three (03) cities namely, Dera Ismail Khan, Sialkot and Tando Allah Yar in Q1 of 2022. During the said re-verification survey, it was found that the licensee still failed to comply with 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%	100%	100%	99.98%
Service Accessibility	> 98%	99.50%	99.10%	<b>97.12%</b>
Call Connection Time (Seconds)	≤ 7.5	5.04	6.18	5.90
Call Completion Ratio	> 98%	100%	99.55%	99.50%
Mean Opinion Score	≥ 3	3.04	<b>2.96</b>	3.23
ISHO for CS Voice (Only)	≥ 98%	99.63%	99.44%	100%
RAB Setup Success Rate (3G)	> 98%	100%	100%	100%
SMS Success Rate	> 99%	100%	100%	100%
SMS End to End Delivery Time (Seconds)	≤ 12	3.21	2.91	2.33
Data Throughput -HTTP Download (3G)	≥ 256kbps	2817.79	2638.49	3386.38
Signal Strength RSCP (3G) of minimum	-100dBm with 90% Confidence Level	-72.8	-61.7	-65.6
		100%	100%	100%
Data Throughput - HTTP Download (4G)	≥ 2Mbps	9.92	7.90	18.31
Signal Strength RSRP (4G) of minimum	-100dBm with 90% Confidence Level	-90.3	-79.2	-76.6
		<b>80.18%</b>	98.15%	98.14%

4.6 Appendix III "Quality of Service" of Next Generation Mobile Services (NGMS) licenses, relates measurement of Mean Opinion Score as follows: "As recommended by ITU-7' in recommendations P.862.2(PES0), P.862.3 (POLQA) or latest ITU/Relevant forum recommendations". It has already been clarified in PTA's detailed response vide letter dated 18<sup>th</sup> March & 6<sup>th</sup> August, 2021 that super wide band never deteriorate the quality rather it measures the MOS of the speech spectrum left over by narrow band above 3400 Hz.

4.7 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. Despite providing opportunity take remove short falls so as to meet the threshold of KPIs of QoS, but the licensee failed to comply with the same.



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. Pak Telecom Mobile Limited has failed to comply with the Quality of Services **KPIs** in 3<sup>rd</sup> Quarter 2021 survey in ten (10) cites. 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, a fine to the tune of Rs.3, 000,000 (Rupee Three Millions) is hereby imposed with the direction to pay the same within a period of one month from the date of receipt of this enforcement order.

5.2 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.

5.3 In case of failure to comply with para 5.1 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 27<sup>th</sup> day of **December, 2022** and comprises of (9) pages only.