



PAKISTAN TELECOMMUNICATION AUTHORITY

HEADQUARTERS F-5/1, ISLAMABAD

<http://www.pta.gov.pk>

F. No. 15-7/19(CA)/PTA/62/2006

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

File No. F. No. 15-7/19(CA)/PTA/62/2006

Show Cause Notice:

6th December, 2019

Venue of Hearing:

PTA HQs, Islamabad

Date of Hearings:

25th June, 2020

The Issue:

"Refund of Service Charges by Pakistan Mobile Communications Limited (PMCL)"

Hearing Panel

Maj. Gen. Amir Azeem Bajwa (R)

Chairman

Dr. Khawar Siddique Khokhar

Member (Compliance & Enforcement)

Muhammad Naveed

Member (Finance)

ORDER OF THE AUTHORITY

Facts of the case:

1. Brief facts of the case are that Pakistan Mobile Communications Limited "PMCL" (the "licensee") is a Public Limited Company incorporated under the Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Pakistan pursuant to the non-exclusive license No. MCT-02/RBS/PTA/2004 dated 26 May 2004, license No. MCT-05/WLL&M/PTA/2007 dated 06th July 2007, license No. NGMS-04/WLL&M/PTA/2014 dated 21st May 2014, and license No. NGMS-06/WLL&M/PTA/2017 dated 29th June 2017 (the "license") issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate telecommunication system and to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license.

2. In accordance with the 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, the licensee is

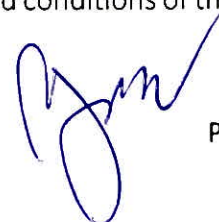
required to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

Proceedings under section 23 of the Act and order passed by Supreme Court of Pakistan:

3. In light of the orders dated 24th April, 2019 & 3rd July, 2019 passed by the Honorable Supreme Court of Pakistan in Human Rights Case No. 18877 / 2018, the Pakistan Telecommunication Authority ("the Authority") vide its letters dated 29th April, 2019 and 8th July, 2019 directed all Cellular Mobile Operators (CMOs) to comply with court order and stop levying service / maintenance charges on prepaid recharge / reload with immediate effect. Pursuant to the above, Pakistan Mobile Communications Limited "PMCL" (the "licensee") vide email dated 20th August, 2019 reported that it has charged / collected approx. Rs. 4.1 billion from 26th April, 2019 to 12th July, 2019 on account of service / maintenance / card / operational fee charges. Admittedly, the licensee has charged and collected amounts on account of service / maintenance charges contrary to the Authority's above referred direction read with judgment passed by the honorable Supreme Court of Pakistan in H.R.C 18877 of 2018, therefore, the Authority vide its letter dated 30th August 2019 directed the licensee to refund the amount charged and collected from 26th April, 2019 till 12th July 2019 to all its concerned subscribers.

4. Upon request of all Cellular Mobile Operators including the licensee a meeting was held on 12th September 2019. After considering the issues raised during the meeting including balance validity period, imposition of any conditions on the refund amount and compliance report, the Authority vide its letter No. 15-7/19(CA)/PTA/62/2006/ dated 19th September 2019 once again directed the licensee to refund the amount of service / maintenance charges levied and collected from 24th April, 2019 to 12th July 2019 to all its concerned subscribers within two weeks in the form of balance amount "with a validity period of 45 days without any conditions". However, in contravention to the directions of the Authority, the licensee refunded the balance amount by imposing restrictions / conditions and stopping subscribed bundles/promotions and forcing subscribers to avail either data services or voice (on-net only) at default rates, which are considerably higher than the rates / tariffs of subscribed bundles. Furthermore, the licensee did not allow its subscribers to make off-net calls from the refunded balance amount.

5. The Authority was in receipt of numerous complaints against PMCL wherein complainants reported their grievances for not allowing them to freely utilize the refunded balance amount as per their own choice. Resultantly, the Authority vide its letter dated 1st October 2019 once again directed the licensee to comply with Authority's directive dated 19th September 2019 in true letter and spirit. Further, the licensee was once again directed to refund balance to the concerned subscribers affected by the above referred licensee's violations within two weeks. However, due to persistent contravention of the directions of the Authority in compliance with judgment of the honourable Supreme Court of Pakistan and the terms and conditions of the license,



the Authority issued a Show Cause Notice (SCN) on 6th December 2019 pursuant to sub-section (1) of section 23 of the Act

6. The contention of the licensee in terms of issuance of modified conditions or instructions by the Authority is not based on facts as the Authority vide its directions on 30th August, 2019 required the licensee to refund the amount charged and collected from 26th April, 2019 to 12 July, 2019 to all its subscribers in the form of balance amount without any validity restriction and submit compliance report duly certified by its auditor. Subsequently, the Authority duly considered the issues raised in the written submissions by the licensee and meeting held on 12th September 2019, including extension in date for compliance, validity period and conditions on the balance refund in its directions dated 19th September 2019 and 1st October 2019. Accordingly, validity period of 45 days and no condition for refund of balance amount was allowed, and compliance date was extended till 20th November, 2019. Thus, impositions of conditions for refund of balance amount by the licensee is contrary to Supreme Court directions and rights and interests of telecom users.

7. Moreover, the methodology adopted by the licensee to refund the amount due to its customers was not adhered in the manner as prescribed. Reportedly, the system was intelligent enough not to allow its subscribers to use refunded balance for off-net calls and subscribers were forced to use the balance at default voice on-net and data rates and their regular packages were also stopped till utilization of the refunded amount.

8. In compliance with PTA's letter dated 19th Sep 2019, Jazz also submitted an auditors report on the refund of service charges. However, the auditor has examined the data provided by Jazz and has not independently verified the same. Auditor's report itself states that "files were extracted by the Company's management and no procedures were required to be performed by us on extraction of these reports from data warehouse and IN". The Auditors have further stated that "Because of the above procedures do not constitute either an audit or a review, we do not express any assurance on the amount charged and refunded to the subscribers on account of service charges....." The report has not mentioned / taken into account Authority's reservations / observations / directions to Jazz for refund of service charges. Furthermore, had the auditor reviewed PTA's letter dated 19th Sep. 2019 then it would have objected on the way refund / amount was restricted in the form of voice on-net minutes and data usage on default rates only, and off-net calls were not allowed.

Findings of the Authority:

9. Despite aforesaid Authority directions in compliance with judgment passed by the honourable Supreme Court of Pakistan, the licensee did not refund the amount of service/ maintenance charges to the affected subscribers without imposing any conditions. Due to persistent contravention of the directions of the Authority in compliance with judgment of the



honourable Supreme Court of Pakistan and the terms and conditions of the license, the Authority issued a Show Cause Notice (SCN) on 6th December 2019 pursuant to sub-section (1) of section 23 of the Act requiring the licensee to remedy the aforementioned contravention by refunding the service / maintenance charges of approx. Rs. 4.1 billion to its concerned subscribers as per Authority's directions dated 19th September 2019 and 1st October, 2019, within fifteen (15) days of the issuance of the notice.

10. In response to the abovementioned notice, the licensee has reiterated its stance that it has refunded approx. 4.1 billion to its consumers in the manner required by the Authority and it was technically not feasible to refund amount without any restrictions, which is not supported by facts. The conditions imposed by the licensee on the refunded balance were intentional. The licensee has restricted its consumers to use balance for either data services or voice / SMS at default voice on-net and data rates and for this period their regular packages were deactivated without their explicit consent. Moreover, further subscription to new packages was also not available to the affected consumers till utilization of the refunded. It is worth mentioning that Telenor and Ufone technically implemented refund of service charges without imposing any conditions on the use of refunded balance and gave options to its consumers to opt for any packages with the refunded amount and users were able to make off-net calls as well.

11. To proceed further in the matter, an Authority Hearing was held on 25th June 2020 at 1200 hrs and the licensee admitted during the hearing that it has not allowed its subscribers to make off-net calls, which means that it willfully imposed conditions on the refunded balance. The Licensee's legal council submitted their updated reply on 2nd July 2020 and reiterated that the licensee had technical limitations due to which subscribers were not allowed to freely use the refunded balance. However, the licensee did not provide any justification / technical limitation for not allowing its subscribers to make off-net calls from the refunded balance.

Order:

12. In light of the foregoing and findings, the Authority hereby concludes that:

- (i) The licensee admitted during the hearing that it has not allowed its subscribers to use the refunded balance for off-net calls. Therefore, the conditions imposed by the licensee on the refunded balance were deliberate. The licensee had restricted its consumers to use balance either for data services or voice / SMS at default voice on-net and data rates, and for this period their regular packages were deactivated without their explicit consent. Moreover, further subscription to new packages was also not available to the affected consumers till utilization of the refunded.
- (ii) The licensee was required to implement Authority decision by making necessary technical arrangements.



13. Therefore, the Authority directs the licensee to refund the full amount of service charges levied and collected from 24th April, 2019 to 12th July 2019 to all its concerned subscribers in the form of balance amount without any conditions. The licensee is required to refund the abovementioned amount within 30 days of the issuance of this order.

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Maj. Gen Amir Azeem Bajwa (R)
Chairman

This order is signed on 8th day of October 2020 and comprises of 5 pages.