



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 China Mobile Pakistan Limited (CMPAK)

Date of Show Cause Notice: 27th April, 2022
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 19th July, 2022

PTA/Enforcement/Enforcement Wireless/Mobile QoS/3-50(Comp-61)/132/2022/208

The Issue:

“Failure to meet or exceed QoS standards as laid down in the license and KPIs”

Decision of the Authority

1. Facts of the case

1.1 China Mobile Pakistan Limited (the “**licensee**”) is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. MCT-03/WLL&M/PTA/2004 dated 23rd October, 2004 and license No. NGMS-01/WLL&M/PTA/2014 dated 21st May, 2014 (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 the Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”), the Pakistan Telecommunication Rules, 2000 (the “**Rules**”) the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 (the “**Regulations**”), the Cellular Mobile Network Quality of Service (QoS) Regulations, 2021 (the “**QoS Regulations**”) and the terms and conditions of the license.

1.3 Under clause (d) of section 4 of the Act, one of the functions of the Authority is to promote the availability of wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan. In accordance with clause (g) of sub-section (4) of section 21 of the Act, the licensee is also under an obligation to provide telecommunication services to particular persons or areas to meet the minimum standards for quality and grade of service requirements.

1.4 As per clause 23.7 of Part 6 of the Rules read with regulation 10 of the Regulations and sub-regulation (1) of regulation 6 of the QoS Regulations, the Authority is empowered to conduct, with or without notice, its own surveys and tests or make surprise checks through its designated officers or conduct performance audit of the quality of service of the licensee from time to time as to ensure that users of telecommunication services get such quality of service as laid down in the license and regulations.

1.5 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 conditions No. 3.1 of the license, the licensee is under obligation to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

1.6 License condition No.6.5.1 of the license requires that the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 and such other quality or service standards as the Authority may by regulations, require. In addition, Appendix 3 of the license prescribed the quality of service standards and requires the licensee to take all reasonable and prudent measures to ensure that its Licensed System and the Licensed Services are available as per the network roll out obligations and operate as per QoS Key Performance Indicators (KPIs). In addition, clause A1.3 of the Appendix-3 of the license further provides that PTA's Regulation on QoS and 3GPP latest Version/ Release of Cellular Mobile (3G/4G/LTE) shall be followed. The Authority may carry out test on the quality of the licensed services and licensed system and the licensee shall extend full co-operation and assistance for the purpose including provision of test instruments and equipment.

1.7 Further clause A 1.5 of Appendix -3 of the license provides that during each calendar month, license shall meet or exceed the quality of service standards.

1.8 In order to measure the QoS performance of the licensee, a survey was carried out from 6th December to 9th December 2021 at Costal Highway, Gwadar City and Surbandar Port Area. Survey result revealed degraded QoS KPIs. Accordingly, the survey results were shared with the licensee with instructions for taking remedial measures including optimization as well as expansion of the network in the surveyed areas. Resultantly, the licensee intimated that network has been optimized to improve the services. However, contrary to the claim of the licensee, a reverification survey conducted in the said areas during 7th to 10th March, 2022 discloses non-compliance of certain QoS KPIs.

1.9 Since, the above said QoS results were not within the parameters of the license conditions and QoS Regulations, therefore, a Show Cause Notice (SCN) under section 23 of the Act on 27th April, 2022 was issued wherein the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service at par with clause 1.3 of Appendix-III of the license and the QoS Regulations within fifteen (15) days and also to explain in writing within thirty days (30) of the issuance of the issuance of SCN.

1.10 In response to the SCN, the licensee filed compliance report vide letter dated 13th May, 2022. The licensee intimated that it is substantially in compliance with the QoS parameters as provided in the license.

1.11 Subsequent to the aforesaid report, the licensee vide letter dated 3rd June, 2022 submitted a reply to the SCN. Crux of the relevant contentions / submissions of the licensee are as under:

- i. Unilateral surveys were conducted.
- ii. Compliance reports with regard to both the surveys were submitted, which substantiates that the licensee is compliant with applicable legal framework.
- iii. SCN is not accompanied by log reports.
- iv. SCN has been issued in contravention of clause 6(5), 6(6), 6(7), of QoS regulations and rules 9 of the rules.
- v. Measures have been adopted and undertaken at great expense, despite being fully compliant, since this area and services provided therein, cannot be by any means be categorized as having 'Return on Investment', since PTCL being the only entity is providing services to the majority of the industry with naturally limited resources qua bandwidth.
- vi. The licensee has undertaken emergency measures for arranging additional/extra bandwidth to remain compliant.
- vii. In case of second survey, the reported deterioration is in fraction and it is negligible for the purpose of the SCN. The licensee further contented that a very little variation of 0.39% in single KPIs (Call Setup Success) is insignificant and immaterial for the purpose of the SCN.
- viii. SCN is in violation of article 10-A of the constitution which grants the right of fair trail and due process.

1.12 In order to proceed further, the matter was fixed for hearing on 19th July, 2022 before the Authority. Mr. Shahzad Sami (Advisor Regulatory), Mr. Shahid Razzaq (Director Regulator), Mr. Raja Abdul (Manager Legal), Mr. Zahid Sohail (Manager Legal), Mr. Maddasir and Mr. Mudassar Abbas (Legal Counsel) attended the hearing on the behalf of the licensee. The learned counsel of the licensee reiterated the same as submitted in reply to the SCN. In addition, it was also intimated that the number of sites will be increased to 7 sites in areas, mentioned in the SCN.

2. Findings of the Authority

2.1 Matter heard and record perused. After careful examination of record following are the findings of the Authority.

2.1.1. The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. 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 meet the requirement of quality of service standards as provided in the license and regulations.

2.1.2 For the purpose of enforcing and monitoring the license, the Authority is empowered to carry out QoS survey so as to ascertain the compliance of KPIs for QoS standard as provided in the license and applicable regulations. In accordance with clause 23.7 of part 6 of the Rules, regulation 10 of the regulation and sub-regulation (1) of 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. For ready reference regulation 6(1) of the QoS Regulation is reproduced below:

“The Authority shall conduct inspection, surveys, test or carry out surprise check as specified in Annex A through its designated officers or conduct performance audit for Quality of Service of the Licensee from time to time to ensure that users of telecommunication service get such Quality of Service Standards as laid down in these Regulations and the license.”

2.1.3 As far as licensee’s assertion with regard to issuance of notice contrary to procedure as laid down regulations No. 6(5) 6(6) and 6(7) of the QoS Regulations is concerned, the Authority is of view that all procedural requirements were observed on the ground that as a result of independent survey, short falls were shared with the licensee and required to improve the same within thirty days. However, for the purpose verification of compliance a reverification survey was carried out. For ready reference regulations 6(5) ,6(6) and 6(7) of the QoS Regulations are reproduced below:

“6(5) The inspecting officer shall prepare an inspection report of the quality of service inspection, also comprising the shortfalls, observed during such inspection.

6(6) This report shall be provided to the licensee in the format as specified in these regulations as Annex B.

6(7) The licensee shall immediately carryout the Root Cause Analysis, take all remedial measures to remove the shortfalls identified in the inspection report and submit compliance report within thirty (30) days of the issuance of the inspection report in confirmation that all stated short falls have been removed.”

2.1.4 In this instant matter, after carrying out the survey, results were shared with the licensee with the direction to take all remedial measure to remove the shortfalls identified in the

inspection report. More so, after carrying out reverification survey by the Authority results were also shared with the licensee through SCN.

2.1.5 With regard to assertion of the licensee that a unilateral surveys were conducted, it is pertinent to point out here that regulation 6 of the QoS regulations empowers the Authority to conduct either independent or joint QoS surveys, therefore, the licensee's assertions are not consistent with applicable regulatory framework.

2.1.6 In respect of contention of the licensee that the SCN was not accompanied by log report, it is relevant to mention here that as per available record log files were shared on 28th April, 2022 after issuance of SCN dated 27th April, 2022, therefore, the licensee's contention is incorrect.

3. Order

3.1 Keeping in view the above, the Authority is of the view that as per applicable regime the licensee is under an obligation to meet the requirement(s) of Quality of Services parameters as laid down in the license conditions and other enabling statutory provisions. In light of record it has been observed that the licensee has undertaken emergency measures for arranging additional/ extra bandwidth to remain compliant for provision of licensed services in accordance with KPIs for quality of service and also ensured provision of seamless services in future, therefore, the Authority taking into the account the efforts on the part of the licensee hereby grants six (06) month(s) time, commencing from the date of receipt of this order, to the licensee for improving and maintaining quality of service standards as per KPIs. After expiry of the said time, an on-ground survey will be carried out to measure the KPIs and in case of non-compliant further action will be taken accordingly.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 16th day of August, 2022 and comprises of (05) pages only.