



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

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

No: PTA/Enf-Wireless/Complaints/4/2020/585

Show Cause Notice:	20 <sup>th</sup> July, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	24 <sup>th</sup> September, 2020

**Panel of Hearing:**

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

**Issue:**

*"Failure to meet QoS standards as laid down in the license"*

**DECISION OF THE AUTHORITY**

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

1.1 Telenor Pakistan (Pvt.) Limited (the "**licensee**") is a private limited company incorporated under the Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No.MCT-01/RBS/PTA/2004 dated 26<sup>th</sup> May, 2004, license No.NGMS-02/WLL&M/PTA/2014 dated 21<sup>st</sup> May, 2014, license No.NGMS-05/WLL&M/PTA/2016 dated 14<sup>th</sup> July, 2016 (the "**licensee**") 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 i.e., Telenor Pakistan (Pvt.) Ltd. 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 (Function & Powers) Regulations, 2006 (the "**Regulations**"), the Cellular Mobile Networks Quality of Service Regulations, 2011 (the "**QoS Regulations**") and the terms and conditions of the license.



1.3 In accordance with Clause (g) of Sub-Section (4) of Section 21 of the Act, the licensee is under 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 Regulation 8 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, regulations, and/or KPIs.

1.5 Clause 6.5.1 of the license obligates the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 of the license and such other quality of service standards as the Authority may by regulations, require. In addition, Appendix 3 of the license prescribes the quality of service standards and requires the licensee to take all reasonable and prudent measures to ensure that the Licensed Services are available at all times and it shall meet or exceed the quality of service standards as mentioned in clause 1.3 of Appendix-3 of the license.

1.6 Upon receipt of the complaints from the Honorable Parliamentarians and subsequent directions from the Public Accounts Committee with regard to degraded quality of licensed services and to further ensure that users of telecommunication services get QoS standards as laid down in the license, the Authority conducted two surveys in the vicinity of the **Red Zone** area and **Parliament Lodges**, Islamabad. The first survey was carried out on 19<sup>th</sup> and 20<sup>th</sup> July 2019, whilst the second survey was conducted on 6<sup>th</sup> and 7<sup>th</sup> August, 2019. Results of QoS parameters in violations of threshold as provided in the license are reproduced below:

<b>QUALITY OF SERVICE RESULTS OF REDZONE ISLAMABD</b>														
<b>Voice KPIs</b>														
<b>Company</b>	<b>Network Downtime (Threshold: &lt; 1%)</b>		<b>Grade of Service (Threshold: ≤ 2%)</b>		<b>Service Accessibility (Threshold: &gt; 98%)</b>		<b>Call Connection Time (Threshold ≤ 6.5 sec)</b>		<b>Call Completion Ratio (Threshold: &gt; 98%)</b>		<b>Mean Opinion Score (Threshold : MOS &gt; 3)</b>		<b>Inter System Hand over ( Threshold: &gt; 947%)</b>	
	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>
<b>Telenor</b>	1.20	45	4	1	96	87.	5.2	4.4	95.8	10	3.7	3.8	10	100
				2		5			3	0			0	
<b>3G Data KPIs</b>														



Company	Data Throughput-HTTP ( Threshold: 3G ≥ 265kbps)		Signal Strength Received Single Code Power 3G(Threshold: Minimum-100dBm)	
	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>
Telenor	4826.5	2612.8	- 77.56	-81.85
4G Data KPIs				
Company	User Data Throughput (Threshold : 4G > 2Mbps)		Signal Strength Received Signal Code Power 3G( Threshold : Minimum- 100dBm)	
	1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>
Telenor	4.92	4.88	-87.69	-88.21

1.7 Since, the above said QoS results were not within the parameters of the license conditions and QoS Regulations, therefore, in order to remove short falls the licensee vide PTA’s letter dated 23<sup>rd</sup>, 29<sup>th</sup> July, 21<sup>st</sup> October, 2019 and reminder dated 14<sup>th</sup> May, 2020 was directed to undertake necessary measures for improvement of the aforesaid areas.

1.8 Due to non-provision of the licensed services and non-maintaining the required standards of quality of service amounts to serious violations and contravention of the prevailing regulatory laws, directions of the Authority. As consequence thereof, a Show Cause Notice (SCN) dated 20<sup>th</sup> July, 2020 under section 23 of the Act was issued whereby the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service of the license and the QoS Regulations within fifteen(15)days of the issuance of SCN.

2. The licensee vide letter dated 19<sup>th</sup> August, 2020 replied to the SCN and denied all allegations. Relevant contentions of the licensee in reply to the SCN are as under:

- a. The licensee asserted that the recent drive tests conducted do not return the alleged QoS shortfalls stated in the SCN. The alleged QoS shortfalls in the SCN do not exist.
- b. The licensee portrayed that the reason for the alleged QoS shortfall is attributable to the omission of the Authority and the ROW owner (CDA) in discharging their statutory obligations under the PTA Act, inter alia, (a) the Authority is unable to remove the multiple jammers and repeaters in the SCN area that severely interfere with the network service, and (b) in the ROW owner (CDA) failing to grant the Licensee's NOC applications expeditiously.
- c. The Licensee contended that it is in full compliance with its licensed and regulatory obligation. Rather, the SCN results from a misreading and misapplication and, therefore, contravention of the provisions of the Act, the Rules, the Regulations, the licenses and the Authority's own settled procedures and practices.



- d. The licensee expressed that aspects of instruments which were overlooked by PTA in issuing SCN, as shown in the list (non-exhaustive) below:

Legal Provision	Violation
<b>Cellular Mobile Network Quality of Service (QoS) Regulations, 2011 (the QoS Regulations)</b>	
8(7)	1. 30 days along with inspection report not given to take remedial measures and submit compliance report; instead the SCN issued prematurely, by passing regulation 8(7)
	2. PTA survey logs specific to the SCN areas not shared to date, rendering the licensee unable to identify the cause and take remedial measures 3. 15 days given to remedy instead of 30 days
8(6) and 8(8) Annexes A & B	4. limited-area survey results are not warranted by the Annexes 5. survey methodology in Annex-A not followed, in particular, external factors affecting the coverage ignored. 6. results not tabulated in accordance with Annex-B
<b>PTA (Functions &amp; powers) Regulations, 2006 (the F&amp;P Regulations)</b>	
10(3)	7. the inspection report with test logs for the SCN areas not shared with the licensee and 30 days timeframe not given to take remedial measures and submit compliance report. 8. PTA survey logs specific to the SCN areas not shared to date, rendering the licensee unable to identify the cause and take remedial measures
<b>The Pakistan Telecommunication Rules, 2000 (the Rules)</b>	
8.2(c) Appendix B	9. Failed to apply the except attributable to " any other act of government or municipal authorities, or other national authorities or any other cause whatsoever which is substantially beyond the control of the licensee" in demanding absolute coverage in areas where the ROW owner (CDA) has not yet issued the NOCs for deployment of additional sites and where the Authority has not removed the jammers and repeaters.
<b>The licenses</b>	
6.5	10. misinterpreted to mean that regulations, directions and decisions of the Authority are binding even if ultra vires or in violation of the applicable legal and license framework
Appendix III	11. limited-area survey for enforcement of QoS is not stipulated in Appendix III and is therefore in valid.
<b>The Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act")</b>	
6, 21,22	12. by purporting to prescribe standards for quality of service and/or imposing obligations or reserving powers for



	the Authority vis-a-vis the measurement, recording, survey, enforcement and other matters pertaining to the QoS not set out in the licenses originally or by an amendment consented to by the licensee, and purporting to bind the Licensee to ultra vires provisions of the Rules, the QoS Regulations, the Rules, and to results of a survey that is materially
	non-compliant with the licensees and the regulatory framework

- e. The licensee articulated that SCN is based on a QoS survey that measures the QoS KPIs in a survey of 2 days, 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. This condition of calendar month measurement is recognized by the Authority itself in paragraph 9 of the SCN.
- f. The licensee expressed that SCN is premised on an error of law in concluding that the "reporting, audit and survey" obligations of the Licensee, and the power of the Authority to conduct surveys and audits translate, *ipso facto*, into concomitant QoS enforcement. This view is deeply flawed. Whilst the surveys, audits and reporting are general obligations, and the Licensee has cooperated and will continue to cooperate with the Authority in carrying out granular surveys, when it comes to *enforcement* of QoS against threat of penalties, only such surveys can form the basis of enforcement which are fully month survey, full network performance, coverage area testing only, and subject to the prudence and reasonable test, with such exceptions as may flow from acts of Nature or circumstances beyond the control of the Licenses.
- g. The enunciated that SCN takes into account a limited-area for the KPIs measurements, which is alien to each license and the delegated legislation administered by the Authority. The limited area measurements reduce the sample size for KPI measurements, whereby even a few unsuccessful calls can cause results to fall below the licensed QoS depicting a wholly unrealistic and distorted result based on a miniscule part of the network, and is therefore highly prejudicial to the Licensee and contrary to the express stipulations in the licenses.
- h. The licensee narrated that 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. To hold otherwise would expose the Licensee to impossible and unachievable targets, not observed anywhere in the world, and against all



international norms and standards, that are stipulated in Appendix III to the licenses.

- i. The licensee averred that the SCN ignores the qualification set out in the very first paragraph of Appendix III of the licenses for the “*prudence and reasonableness*” test in the application of the KPIs, *despite acknowledging this test in para 9 of the SCN*. 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 results at *a prudent and reasonable cost*. That is to say, the KPIs are not an absolute obligation, but their application is subject to the aforesaid test.
- j. With regard to receipt of complaint from the Honorable Parliamentarian and subsequent direction from Public Accounts Committee, the licensee contended that the survey results are stale, depicting the service quality over a year ago, and do not represent the current state of the service. Further service improvement is contingent on remedial measures by removal of jammers and repeaters and installation of additional sites. The former is a task exclusively within the powers of the Authority. The latter is a task beyond the control of the licensee until the ROW owner (CDA) grants the NOC.
- k. The licensee discoursed that the appropriate Government has now taken cognizance of the ROW owner's (CDA) failure to provide the requisite NOCs by calling for hearing on 20<sup>th</sup> August 2020 vide letter dated 13<sup>th</sup> August 2020. The licensee will update the Authority on the outcomes of the hearing and, subject to grant of the NOC by the ROW owner (CDA), will proceed with obtaining the NOCs of the respective site lessees, the EPA and such other NOCs as required under the applicable law and on grant thereof will proceed to install the additional BTS.

### **3. Hearing before the Authority**

3.1 In order to proceed further, the instant matter was fixed for hearing on 24<sup>th</sup> September, 2020 before the Authority. Mr. Haider Latif (Head of Legal), Mr. Jawad Khattak, (AM Regulatory), Mr. M. Ali (Manager RAN Planning), Mr. Jahanzaib Ali (Manager Legal), Mr. MNA Rehan, (Advocate High Court), Mr. Ejaz Ishaq Khan (Advocate Supreme Court) and Mr. Bilal Maroof (Regulatory Executive) attended the hearing on the behalf of the licensee. During the hearing, the learned counsels of the licensee reiterated that same as submitted in reply to the SCN.



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

4.1 Matter heard and record perused. After careful examination of record and arguments advanced by the legal counsel as well as written reply to the SCN, the Authority reaches at the following findings:

4.1.1 The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. 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 terms and condition licenses. Pursuant to the license granted by the Authority, the licensee is under an obligation 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 from time to time.

4.1.2 Section 21(4) (g) of the Act provides that the licensee is under obligation to provide telecommunication services to particular areas to meet minimum standards for quality and grade of services requirement. 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.

4.1.3 License condition No 5.1 of the license further obligates the licensee that the system will be designed for a system availability of 99.5% of the time and no more than 3% blocking in switching will be acceptable. However, the licensed services transmitted through the system have not been found in accordance with said parameters as laid down in the license and the QoS Regulations.

4.1.4 During hearing, the licensee was granted an opportunity to submit a compliance report with respect to any shortfalls identified. Telenor vide its email dated 20<sup>th</sup> January, 2021 informed and provided Minutes of the Senate Standing Committee on Housing Senate Housing Committee Minutes of Meeting, wherein, the Committee has unanimously agreed in favor of Telenor for granting space for installation of Site on Parliament Lodges. Accordingly, Telenor committed in its email that site at Parliament Lodges will be on-air by 5<sup>th</sup> Feb, 2021. Further, Telenor is provided that the height of already installed site at GEO TV building is being increased. This is currently serving Parliament Lodges for better coverage and the same will be completed by 31<sup>st</sup> Jan, 2021.

4.1.5 Later on, the licensee through series of emails dated 12<sup>th</sup> February, 2021, 25<sup>th</sup> February, 2021 and 22<sup>nd</sup> March, 2021 provided dates for installation of tower on parliament lodges by 10<sup>th</sup> April, 2021. Nevertheless, in response to seeking updated status, the licensee vide email dated 23<sup>rd</sup> April, 2021 further informed that the site will tentatively be on air by 31<sup>st</sup> May, 2021. However, the licensee after lapse of considerable time has now installed tower which is on Air.

## 5. ORDER

Keeping in view the above-mentioned facts coupled with the available record, the Authority hereby decides as under:

5.1 Since the licensee has remedied the contravention by installation of the site bearing No. IIB423 at Parliament Lodges as mentioned in SCN, therefore, the said Show Cause Notice stands disposed of accordingly.

5.2 However, licensee is hereby warned not to repeat such contravention in future, otherwise legal action shall be taken under the provisions of Pakistan Telecommunication (Re-organization) Act, 1996.

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

Chairman

**Muhammad Naveed**

Member (Finance)

**Dr. Khawar Siddique Khokhar**

Member (Compliance & Enforcement)

Signed on 12<sup>th</sup> day of October, 2021 and comprises of (08) pages only.