



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD

Enforcement Order under Sub-section 3 of Section 23 of the Pakistan Telecommunication
(Re-organization) Act, 1996 against Pakistan Telecom Mobile Limited

No. PTA/Services/Numbering/spamming/197/2019/601

Date of Show Cause Notice:	3 rd December, 2019
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	24 th March, 2021

Panel of Hearing

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

Issue:

“Spamming, Unsolicited and Fraudulent Communication”

DECISION OF THE AUTHORITY

1. Facts of the case:

1.1 Briefly stated facts of the case are that **Pakistan Telecom Mobile Limited** (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 non-exclusive license No.MCT-05/WLL&M/PTA/2014 dated 8th April, 2014 and license No.NGMS-03/WLL&M/PTA/2014 dated 21st May, 2014 and (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 prevailing regulatory laws comprising of the Act, the Pakistan Telecommunication Rules, 2000 (the “Rules”) the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 , the Numbering Allocation & Administration Regulations, 2018 (the “NAAR Regulations”), the Protection from SPAM, Unsolicited, Fraudulent & Obnoxious Communication Regulations 2009 (the “SPAM Regulations”) as amended from time to time and the terms and conditions of the license.

1.3 By virtue of license condition No. 3.1 of the license read with clause 8.1 of Appendix B of the rules, the licensee is required and obliged to abide by the provisions of the Act, Rules, regulations, orders, determinations, directions and decisions of the Authority made or issued by the Authority. As per section 4(1)(m) of the Act, the Authority is mandated to protect the consumer rights. Section 6 (f) of the Act further provides that the Authority shall ensure the interests of users of telecommunication services are duly safeguarded and protected.

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1.4 In accordance with license condition No. 7.8.1 of the license, the licensee is under obligation to take all reasonable steps to track and locate and prevent the source of harassing, unsolicited, offensive, fraudulent or unlawful communication. More so, under license condition No. 7.8.2 of the license, the licensee shall, on the directions of the PTA, terminate or suspend service to any customer that is the source of harassing, offensive or illegal communication.

1.5 For transmission of any information through numbers allocated / assigned under the NAAR Regulations, the licensee under sub-regulation (4) of regulation 14 of the NAAR Regulations is not allowed to translate, alter or delete the telephone number or other identification associated with its subscribers. Whereas, sub-regulation (5) of regulation 14 of the NAAR Regulations further provides that the licensee shall not translate, alter or delete the signaling or other data associated with all calls routed through its network.

1.6 As per sub-regulation (6) of regulation 14 of the NAAR Regulations each party shall program the number series in their switches in accordance with number series - allocated by the Authority and National Numbering Plan issued by the Authority and shall comply with the numbering provisions. Furthermore, sub-regulation (7) of regulation 14 of the NAAR Regulations provides that the parties shall ensure correct numbering information is sent from one network to the other for delivery of domestic and international calls.

1.7 Sub-regulation (8) of regulation 14 of the NAAR Regulations provides that the parties shall convey to each other, telephone numbers in the national and international formats as contained in National Numbering Plan issued by the Authority. Sub-regulation (9) of regulation 14 of the NAAR Regulations provides that the Parties shall adopt and comply with the numbering system and number format as specified in Authority's National Numbering Plan and framework and guidelines on the usage, allocation and assignment of numbers.

1.8 The matter pertaining to protection of consumer interests has been provided in various regulations. For taking preventive measures as to avoid transmission of the voice or data through networks, the licensee under clause 1 of Annexure "A" of regulation 4 of SPAM Regulations require that an intelligent and robust anti-spam solution at each Operator's end being regularly updated to cater for the changing spam content. Further, clause 1 of Annexure "C" of regulation 10 of SPAM Regulations provides that lists of abusers should be maintained at each Operator's end. Grey and Black lists should be prepared by each Operator and submitted to the Authority as and when required by the Authority. A user should be placed in appropriate category on the basis of its past record. A Grey list entry should have access to limited services as compared to White list entry (meaning a list of all subscribers with clear record one that has full access to all permissible services) whereas connectivity for a Black list entry may be limited to receive only and making an emergency call.

1.9 In order to ensure compliance and enforcement of license conditions, the Authority time and again issued directions to the licensee for compliance. Accordingly, the licensee through letter No. PTA's letter No. Services Division/197/2019 dated 24th October, 2019 followed by emails dated 8th November, 2019 and 29th November, 2019 directed the licensee to discontinue dissemination of i) **messages through alphanumeric sender ID**, ii) **messages to non-opt-in subscribers**, iii) **non PTA's approved content**; and iv) **message through non-PTA's approved short code with immediate effect**. However, it has been noticed that despite clear directions, the licensee has miserably failed to comply with the same.

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1.10 As a consequence of non-compliance on the part of the licensee, a SCN was issued wherein the licensee was required to remedy by the contravention by discontinuing the discontinuation of dissemination of; i) messages through alphanumeric sender ID, ii) messages to non-opt-in subscribers, iii) non PTA's approved content and iv) message through non-PTA's approved short code as well as provision of comments on consultation paper.

2. Reply to the SCN

2.1 The licensee in response to SCN, vide letter dated 2nd January, 2020 and denied all allegations made in the SCN. Crux of the contentions of the licensee are provided under:

- i. The SCN does not highlight the mandatory provisions of the regulations and laws, which the licensee has violated.
- ii. The licensee promptly responded to the letter dated 24th October, 2019 and submitted its comments over the desired measures PTA intends to take for the control of communication of geographic and large accounts. The licensee is not doing any act contrary to law. The licensee has duly responded to the said matter through letters dated 24-03-2017, 25-08-2015, 01-10-2015, 20-04-2018 and 11-11-2019.
- iii. In the proposed regulations PTA has not given any detailed and explanatory measures and procedure to the "Alphanumeric" vis-a-vis other regulations like Spamming Regulations, 2009. T
- iv. The licensee is not sending any such promotional/commercial messages to the opt-out (Non-opt-in) clients which in fact can also be corroborated from this fact that not even a single complaint has been lodged yet against the licensee from any quarter for the violation of such regime. The licensee has been following these regulations since its inception.
- v. That PTA has not yet regularized the procedure for the approval of content. Under the Spam regulations 2009 and NAAR regulations 2018, PTA is not regulating content of text messages. The licensee is monitoring and filtering the content of its legitimate large accounts. The term "Content" has not been exhaustively defined and explained as to give guidance as what the licensee has to filter/censor and its interplay with the right of privacy guaranteed under the Constitution. The licensee is a service intermediary as stated under NAAR regulations who is bound by the service contract/ license and the Telecom Policy 2015 at clause 9.8.6 also clarifies that it is a service intermediary and content is out of its purview.
- vi. That the PTA's proposed regulations are not only adversely affecting the business model of the licensee but also the genuinely registered Telemarketers but shall also affect the profitability of the industry and thus also impact tax collection. PTA should have also taken the Telemarketers on board by issuing a public notice and hearing and receiving their input as whether the proposed regulations would cause burden and inconvenience to them and thus they would opt for other marketing forums.

2.2 Apart from reply to the SCN as stated above, it is also imperative to point out that multiple sessions for resolution of the issue were carried out. Pursuant to court order dated 20th December, 2020 passed by the Honorable Lahore High Court, Lahore, PTA issued

Minutes of meeting dated 3rd January, 2020 wherein operators were required to comply with the PTA's letter dated 24th October, 2019.

3. Hearing before the Authority

3.1 In order to proceed further, the matter was fixed for hearing on 24th March, 2021. Mr. Muhammad Omer Malik, (Advocate Supreme Court) Mr. Tayab Siddique, (Advocate High Court), Mr. Rafique Ahmed, (Manager Legal), Mr. Fawad Niazi, (Senior Manager Regulatory Affairs) and Mr. Naveed K. Butt, (GCRO) on behalf of the licensee attended hearing. During the hearing, the licensee further reiterated the same as submitted in the reply to SCN

4. Findings of the Authority

4.1 After careful examination of record and hearing the parties in detail. Findings of the Authority are as under:

4.1.1. The Authority under the Act is mandated to protect the interests of telecom consumers. Accordingly, all licenses contain conditions related to consumer protection. More so, the Authority in exercise of powers conferred under section 5 (2)(o) of the Act, has issued Consumer Regulations and Spam Regulations as to ensure to protect the interests of telecom consumers. In this regard all possible technical preventive measures from spam, fraudulent, unsolicited and obnoxious communication are required to be taken by the licensee. Considering the nature of case and allegations in the SCN, findings of the Authority on each contravention is given below:

i) Messages through alphanumeric sender ID

a. At the very outset it is clarified that alphanumeric regime for any commercial activity is not allowed. Considering the nature of case with regard to receipt of unsolicited, obnoxious or spam messages including messages through alphanumeric ID is a prime issue to take such steps in curbing this menace. The Authority has not issued any approval or regulations which allow licensees or any person to disseminate any communication / messages through alphanumeric IDs. The Authority is of the view that the licensee has also failed to adhere to meet the regulatory compliances in terms of the requirements provided in NAAR Regulations which prohibits dissemination of messages through altering, modifying and translating numbering as alphanumeric. Clause (b) of sub-regulation (1) of regulation 14 of NAAR Regulations further provides that the allocation shall be used for specified purpose in the manner as approved by the Authority.

b. Furthermore, as per sub-regulation (6) of regulation 14 of the NAAR Regulations each party shall program the number series in their switches in accordance with number series and National Numbering Plan as issued by the Authority. More so, sub-regulation (7) of regulation 14 of the NAAR Regulations provides that the parties shall ensure that correct numbering information is sent from one network to the other for delivery of domestic and international calls. It may be noted that spamming is also an offence under section 25 of the Prevention of Electronic Crimes Act, 2016.

ii) Messages to non-opt-in subscribers, non-approved contents and non-approval of short codes

a. Current regulatory regime for dissemination of messages is based upon the basis of “**opt in**” and for “**closed user groups**”. No one is allowed to disseminate any messages to anyone without their explicit consent. It is imperative to point out that the licensee is under obligation to apply for short code for various services. All approval of short codes clearly spells out the mandatory requirement of “**opt in**” and for “**closed users group**”. All categories of Application to person (A2P) messages either “**Push SMS**” or “**Pull SMS**” are not allowed to be disseminated / terminated without consent of the subscribers.

b. In addition, the concept of Do Not Call Register (DNCR) was introduced in 2009. However, while examining the issue in hand, it has also been observed that the DNCR has not yet been implemented in true letter and spirit. Despite promulgation of Spam Regulation in 2009, no concrete development with regard to implementation of DNCR has so far been found effective. Increasing trends of complaints and excessive dissemination of unsolicited / obnoxious and spamming messages, through consultation paper suggested the regime of **Do- SMS-Register** which is a list of opt-in subscribers.

c. With regard to telemarking the licensee is under obligation to adhere the requirements as provided in regulation 8 of the Spam Regulations. Most importantly, sub-regulation (3) of regulation 8 of Spam Regulations obliged the licensee to ensure that subscribers are well informed regarding the option of their consent or otherwise for entering their particulars in the DNCR at the time of subscription. But considering the quantum of complaints / concerns from various resources, it is observed that the same has not been complied with in the manner as ought to be. Thus the licensee is directed to discontinue registration of telemarketers and share list of all telemarketers along with copy of already registered with the licensee within fifteen days from the date of receipt of this order.

5. Order:

5.1 In light of foregoing factual, legal position and findings of the Authority, the licensee is hereby directed to comply with the following:

- a. To implement Do Not Call Register (DNCR) in true letter and spirit in the manner as provided in the Protection from Spam, Unsolicited, Fraudulent and Obnoxious Communication Regulations, 2009.
- b. To take all preventive measures with regard to non-disseminating messages through alphanumeric sender ID contrary to applicable regulatory regime, messages to non-opt in subscribers, non-PTA's approved content and through non-PTA's approved short code.
- c. To submit a compliance report of the aforementioned direction(s) as mentioned at paras 5.1(a and b) and 4.1.1 (ii) (c), within fifteen days from the date of receipt of this order.

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- d. Since the licensee has not come up with satisfactory reply therefore, the licensee is hereby warned not to repeat the same, otherwise, further legal proceedings will be initiated as per law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 26th day of October, 2021 and comprises of (6) pages only.