



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 Pakistan Telecom Mobile Limited (U-fone)

Date of Issuance of Show Cause Notice:	17 th January, 2022
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	14 th April, 2022

PTA/Enf-Wireless/Mobile QoS/Warsak & Charsadda Road/ 109/2021 // 70 .

The Issue:

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

Decision of the Authority

1. Brief Facts of the case:

1.1 Pakistan Telcom Mobile Limited (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 8th April, 2014 and license No. NGMS-03/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 3.1 of the license, the licensee 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) at all times.

1.7 In order to measure the QoS performance of the licensee, a joint survey was carried out from 26th October, 2020 to 27th October 2020 at Warsak & Charsadda Roads, Peshawar. During the survey, it was revealed that 3G & 4G/LTE Signal Strength at Charsadda Road and 4G/LTE Signal Strength at Warsak Road were below the standards prescribed in the license. Accordingly, the survey results were shared with the licensee vide letter dated 29th October, 2020 with direction to improve the services up to the licensed standards and include the area in 4G/LTE future rollout plan. The licensee was required to submit compliance report by 20th November, 2020. The licensee vide letter dated 4th December, 2020 replied and provided the reasons for the shortfalls/degradation in QoS as being attributed to testing methodology of performed by PTA in patches where the licensee does not claim 4G coverage, not duly supported with any substantiating evidence. In light of response received from the licensee, a re-survey was carried out independently, from 4th October to 27th October, 2021 at the said areas where it was observed that, contrary to the claim of the licensee, some of the QoS KPIs are persistently below the standards stipulated in the license.

1.8 Since, the 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 17th January, 2022 was issued whereby the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service at 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 (30) days of the issuance of SCN.

1.9 In response to SCN, the licensee filed compliance report vide letter dated 31st Jan., 2022 and relied to the SCN vide letter dated 14th Feb., 2022. The main assertions are as under:

- i. At the outset, the licensee stated that by repealing the existing QoS and promulgating the QoS Regulation, 2021 read with the 2014 license QoS KPIs thereof, PTA appears to have willfully designed the survey to declare the licensee delinquent in the performance of its obligation. The QoS KPIs given in the 2021 Regulations cannot override the Roll obligations and QoS KPIs agreed in the license, albeit Clause 6.5.1 of the license mentions that:
 - a. "The license shall at all time meet or exceed the Quality of Service standards described in Appendix- III and such other Quality of Service standards as the Authority may, by regulation, require".

- ii. Both the license and the 2021 Regulations (in suppression of 2011 Regulations on the same subject) and the obligations arising thereunder are so closely interlinked, they cannot be applied concurrently by the Authority. By adopting the 2021 Regulations, the Authority has, in purported exercise of power under clause (o) of sub section (2) of Section 5 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (the "Act"), converted a recommendatory function into a directory function, the Authority cannot directly or indirectly, vary the terms and conditions of a license duly issued to a service provider.
- iii. PTML is fully cognizant of PTA's powers and functions, inter alia, "promoting the availability of a wide range of high quality, efficient, cost-effective and competitive telecommunication services throughout Pakistan". In this context, it is submitted that:
 - i. The PTML is not merely competing on price (static competition), but also on products and services (dynamic competition) in each service area throughout Pakistan which is not possible without providing quality service.
 - ii. Furthermore, PTML has always cooperated with the Authority in discharging its obligations in the interest of its business as well as the national economy. While discharging its obligations and exercising judicial discretion, the Authority should not view any statutory provision in isolation, but instead, it should be viewed in the context of the overall scheme of the Act and its impact on the ecosystem of the telecommunication industry.
 - iii. Furthermore, instead of resolving the fundamental and technical problems faced by the operators, who are already under huge financial stress, it appears that the Authority is more geared towards introducing redundant regulator's interventions, at both wholesale and retail levels, including QoS KPIs trivia conducted without due, albeit not obligator)', participation of the operator, which, in turn, is increasing uncertainty and restrain free competition in the market as well as over-regulation of the industry.
- iv. PTML is fully compliant with the license conditions, including clause (g) of sub-Section 4 of Section 21 of the Act dealing with the provision of basic telecommunication services to a particular person or area to meet minimum standard of quality and grade of service. PTML has never received any complaints with respect to the degradation of its service quality on Charsadda and/or Warsak Roads.
- v. A bare overview of the PTA's activities in terms of conducting QoS survey on roadsides, by placing reliance on para 23.7 of Part 6 of the Rules and Regulation, instead of primarily focusing on the town/city and population where an operator has claimed coverage and duly shared with PTA suggests that PTA's officers are intentionally perpetuating an environment to dig out loopholes howsoever possible and make a case against the operator.
- vi. PTA conducted a Joint QoS testing from 26th to 27th October 2020 at Warsak and Charsadda Road, Khyber Pakhtunkhwa. Contrary to what is shared in the SCN, 3G signal strength at Charsadda Road was found in conformance in October 2020 testing with value 95.67% > -100dBm. Hence, as per the roll-out obligations and PTML claims per 2014

License, there is no case of non-conformance. Still, on 4G/LTE Signal strength, it has already been submitted that PTML does not claim 4G/LTE complete/end-to-end coverage on Charsadda and Warsak Roads yet, and it has never submitted any coverage claim in the contended roads; hence, there is no non-conformance as of October 2020 testing at the contended roads.

- vii. PTML is in the processing of expanding its 4G/LTE coverage as per its business plans. Ignoring 3G claimed service under the 2014 License, PTA instead chose to directly center its case on 4G/LTE parameters which were recorded with values 88.68% and 64.36% > -100dBm. Indeed, the minor shortfalls surfacing in PTA's survey were due to the testing methodology adopted, where PTML has already communicated about its patchy services as submitted to the Authority in PTML's Letter dated 4 December 2020. If we considered the testing performed only in PTML's 4G/LTE coverage areas the 4G/LTE signal strength RSRP (> -100dBm with 90% Confidence) on the contended Roads was at par as in PTML letter submitted on 4 December 2020.
- viii. PTML in order to improve 4G/LTE services in the contended areas had by September 2021, upgraded Seven (7) sites to provide 4G/LTE services. Moreover, two (2) new 4G/LTE sites are also planned in the area which are part of PTML future roll out plan.
- ix. PTA mentioned in the SCN that, in light of PTML's response, it conducted an independent re-survey in October 2021 and contrary to the claim of licensee, some of the QoS KPIs were found **persistently** below license standards. This is to highlight that the KPIs which were reported non-conformed in 2020 testing, were only 4G/LTE Signal Strength and results of 2021 independent testing as shared by PTA in Annex-A of the show cause notice reveals that PTA did not conduct any 4G/LTE testing on Charsadda Road whereas 4G signal strength at Warsak Road was now found in conformance.
- x. Having said that, the CSSRs KPI which is reported non-conformed in **2021's** independent testing results, was actually in 100% conformance during **2020** Joint QoS testing.
- xi. However, it is pertinent to mention that the initial analysis of the logs showed that there were only **25** calls conducted on Warsak Road testing and only **30** calls conducted on Charsadda Road. Using such a low sample count for QoS KPI calculation does not even allow margin of a single failure event which practically means that the CMO is required to give 100% conformance, which lies in contradiction to the QoS KPI license obligation threshold. Since field testing is a sampling methodology', it is imperative to use significant sample count to ensure statistically accurate results.
- xii. Similar to the sampling size shared by PTA for CMOs Quarterly Quality' of Service Survey Plan 2021 vide Letter No. No. PTA/Enf/Enf-Wireless/CMOs QoS Surveys/47/2021-I: dated 21st January 2021, it is suggested that at least **200** sample count should be used to calculate QoS KPIs to ensure accurate QoS depiction.
- xiii. The issues related to QoS methodology and Survey results analysis have already been highlighted and discussed at length several times, more recently in PTML's letter dated 3 January 2022.

1.11 In order to proceed further, the matter was fixed for hearing on 14th April, 2022 before the Authority. Mr. Naveed K. Butt (GCRO), Mr. Amer Shafiqui, Mr. Arshad Javed, Mr. Asad Nizam Butt and Mr. Bilal Rasool attended the hearing on the behalf of the licensee. The learned counsels of the licensee reiterated that same as submitted in reply to the SCN.

2. Findings of the Authority:

Matter heard and record perused. After careful examination of record, followings 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 regulation. 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 In the instant matter, a joint survey was carried out and as per survey report short falls were shared with the licensee. The licensee was required to improve the services up to the license standard and include the areas in 4G /LTE future roll out plan. The licensee replied that it has improved and observing QoS standards as per required KPIs. In order to verify the claim of the licensee the Authority carried an independent survey. As a result of independent survey report, it has been found that QoS standards were below the required KPIs. For the purpose record and clarity, it also relevant to point out that as per license condition No. 6.5.1, the licensee is required at all time to meet or exceed the Quality of Service standards described in Appendix-III of the license and QoS Regulations.

2.1.4 In accordance with applicable regulatory framework, the Authority is empowered to carry out survey for QoS for the purpose of verification of compliance of quality of

service standards as provided in the license and applicable regulations. For ready reference regulations 6(5) and 6(6) 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.

2.1.5 After carrying out joint 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 an independent survey by the Authority, the results were also shared with the licensee through SCN.

2.1.6 As far as licensee's assertion with regard to applicability of regulations is concerned, it is clarified that after carrying out consultation with all stake-holders amendments were made in the regulations. The said regulations are not inconsistent with applicable legal regulatory framework. It would not be out of context to mention here that as per license terms and condition, the licensee is under an obligation to abide the regulations pertaining the QoS. The license condition No. 6.5.1 of the license expressly provides that the licensee is bound to comply with regulation. The license condition states as under:

“6.5.1 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. The license shall maintain records of its performance in meeting these quality of service standards, and shall submit them to the Authority on a quarterly basis in such format as the Authority may require. The license shall maintain supporting records for inspection and technical audit as and when required by the Authority. The licensee shall maintain all such records for a period of three years.”

2.1.7 The said license condition clearly states that the licensee at all the time is required to meet the quality of service standards described in Appendix-3 and such other quality or services standard as the Authority may by regulations require.

2.1.8 With regard to observation of the licensee on sample size, it is clarified that the licensee is erred in understanding to meet the requirement of QoS on the premise that as per terms and condition of the licensee, where the license is providing the licensed services, it is an obligation upon the licensee to meet the standard of QoS at all the times. Since the licensee is providing the licensed service in the survey areas and also charging consumer against services therefore, the license has to meet the QoS for provision of licensed service. The licensee acknowledged that pursuant to license, the licensed services are being provided in the survey areas therefore, the licensee's contention pertaining to selection of areas as well as sample size as to ascertain the QoS requirement is not justifiable. The

licensee in accordance with terms and condition of licensee is required to meet at all the time QoS standard as provided in the license and applicable regulations.

2.1.9 After hearing, an independent QoS survey was carried out at Warsak and Charsadda Roads, Peshawar on 26th April, 2022. During the survey, it was found that voice and data services of the licensee were up to the mark at Warsak Road, Peshawar. However, Call Completion Ratio & SMS Success Rate were found degraded at Charsadda Road, Peshawar.

3. Order

3.1 Keeping in view the above-mentioned facts coupled with the available record, it is concluded that though the licensee has upgraded QoS KPIs at Charsadda and Warsak Roads however, KPIs i.e.) *Call Completion Ratio* and ii) *SMS Success Rate* still required up gradation at Charsadda Road, Peshawar. Considering the progress in observing the QoS standards, the Authority hereby issues warning to the licensee with the direction to comply with the QoS requirements in accordance with applicable regulatory framework.

3.2 In case of failure to comply with regulatory compliance with regard to Quality of Services Standards, legal proceedings will be initiated against the licensee as per applicable laws.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 13th day of June, 2022 and comprises of (07) pages only.