



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

Date of Issuance of Show Cause Notice: 17th January, 2022
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 19th April, 2022

PTA/Enf-Wireless/Mobile QoS/Warsak & Charsadda Road/109/2021/171

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 Telenor Pakistan (Pvt.) Limited (the "**licensee**") is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. MCT-01/RBS/PTA/2004 dated 10th December, 2021, license No. NGMS-02/WLL&M/PTA/2014 dated 21st May, 2014 and license No. NGMS-05/WLL&M/PTA/2016 dated 14th July, 2016 (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 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 Network Quality of Service (QoS) Regulations, 2021 (the "**QoS Regulations**") and the terms and conditions of the license.

1.3 The Authority under section 4(d) of the Act is mandated to promote the availability of wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan is one of the functions of the Authority.

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

1.5 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.

1.6 License condition No. 6.5.1 of the license obliges the licensee at all times to meet or exceed the quality of service standards described in Appendix-III and such other quality or service standards as the Authority may by regulations, require. In addition, Appendix-III 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 System and Licensed Services are available as per the network roll out obligations and operate as QoS Key Performance Indicators at all the times. It is also relevant to point out that as per license condition No.6.5.1 of the licensee renewed in 2021, in addition to meet the requirement of the quality of service standards it has been provided that the failing to comply the QoS the licensee shall be subject to the penalties determined by the Authority in accordance with the Act, Rules or Regulations. Further the licensee is also required to maintain records of its performance in meeting the quality of service standards, and shall submit them to the Authority on quarterly basis in such format as the Authority may require. The licensee shall maintain supporting records for inspection and technical audit as and when required by the Authority. The licensee shall maintain such records for a period of three years.

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 4G/LTE Signal Strength, and Call Connection Time at Charsadda Road, and 4G/LTE Signal Strength and Call Connection Time at Warask Road were below the standards provided 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. In response, with delay of nine (9) days, the licensee vide email dated 29th November, 2020 provided reasons for the shortfalls/degradation in QoS and claimed improvement in service based upon network optimization including 2G and 3G neighbor tuning, power adjustments and physical modifications. In light of response received from the licensee, PTA carried out independent survey from 4th October to 27th October, 2021 at the said areas. After survey it has been found that the claim of the licensee for rectification of shortfalls was not in accordance with the required QoS standards.

1.8 Since, the QoS results were not within the parameters as laid down in 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 within fifteen (15) days and also to explain in writing within thirty (30) days of the SCN.

1.9 The licensee vide letter dated 1st February, 2022 submitted compliance report and stated that through email dated 28th November 2020, it informed the Authority about the remedial action taken to improve the service in the area. After a period of almost one year i.e. from 4th – 27th October 2021 an independent survey was conducted on the same area/roads. The licensee further submitted that for Charsadda Road, in light of detailed analysis of the survey logs provided by PTA, the licensee made 29 call attempts and all these calls were successfully connected as per PTA recommended KPI. There seems to be a calculation error while formulating the results where service accessibility is declared 96.55% whereas in actuality it is 100%.

1.10 In addition, the licensee through letter 15th February, 2022 submitted reply to SCN. The main contentions are as under:

- i. The Authority unilaterally issued the SCN after completing the Independent Re-Survey and without calling for any prior explanation from the Licensee, thereby presuming the contraventions alleged in the SCN on part of the Licensee, and thus violating the fundamental right of fair trial and due process guaranteed by Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.
- ii. On 28th November 2020, the Licensee explained the degradation, and demonstrated that, consequent to necessary remedial action, the Licensee was compliant with all prescribed KPI thresholds in the Survey Areas. The Authority's silence on the subject for nearly thirteen (13) months (up until the issuance on the SCN on 17th January 2022 was tantamount to an acceptance of the licensee position as asserted in its email dated 28th November, 2020 and was also reflective of the Authority's satisfaction that the licensee had become compliant in all respects.
- iii. The Joint Survey and the Independent Re-Survey are entirely incompatible with each other in that each set of results relates to a completely different set of KPIs allegedly falling below the prescribed standards.
- iv. In terms of the results of the Joint Survey, two KPIs, namely, call connection time and 4G/LTE signal strength, were allegedly below the standard KPI thresholds set out in the Licenses as far as both Survey Areas were concerned.
- v. In contrast the results of the Independent Re-Survey, call set-up success rate was below the standard KPI thresholds in both the Survey Areas, whereas call connection time, SMS success rate, and SMS end to end delivery time were below the standard KPI thresholds at Warsak Road alone. Therefore, correlating the Joint Survey as a reference point with respect to the Independent Re-Survey is like comparing apples with oranges
- vi. After receiving the SCN, the Licensee conducted single user drive tests in both the Survey Areas wherein the licensee has been found in compliant with all

those prescribed KPI thresholds in the Survey Areas about which the SCN alleges the Licensee to be non-compliant.

- vii. The Licensee has analysed the logs of the Independent Re-Survey: there have been **29** attempted calls, and all of them got successfully connected in accordance with the Authority's recommended KPI 10100 Accessibility, which indicates that there has been a calculation error while formulating the results where call setup success rate at Charsadda Road is declared to be **96.55%** whereas it is in fact 100%.
- viii. The two Survey Areas selected by the Authority, which are both intercity roads at Peshawar (called Charsadda Road and Warsak Road, each being up to **25 km** in length), as opposed to chunks of populated territories inside cities or towns, as well as the sample sizes so selected (varying between **24** and **44** voice calls, SMS transmissions and data sessions in auto mode), have ended up depriving the Licensee's quality of service to be measured in a fair and reasonable manner on grounds that the narrow or smaller a survey area or a sample size is, the more likely it is for survey results to get skewed to the Licensee's detriment.
- ix. The Licensee has already conveyed to the Authority its strong reservations about several aspects of the QoS Regulations of 2021, and has sought a detailed meeting with the Authority to resolve the underlying issues. Included in these strong reservations is the outright rejection of Clause (c) of Section 1 of Annex-A to the QoS Regulations of 2021 (titled Drive Test/Survey Measurement Methodology), whereby roads, consisting of motorways national and provincial highways, and intercity roads, have been set out as survey areas for voice calls, SMS transmissions and next generation mobile services.
- x. The sample sizes selected by the Authority (varying between 24 and 44 voice calls, SMS transmissions and data sessions in auto mode as explained by the results of the Joint Survey, the Independent Re-Survey and the SCN) also fall way short of the minimum sample size of 200 that the Authority has itself been employing in its past practices, which minimum sample size is also consistent with international best practices.
- xi. The SCN is issued in violation of the Act 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 quality of service 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 Regulations, the QoS Regulations, and to results of two surveys that are materially non-compliant with the Licenses and the related regulatory framework

- xii. The 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 quality of service enforcement. This view is deeply flawed. While 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 quality of service against threats of penalties, only such surveys can form the basis of enforcement which are fully compliant with Appendix-III of the Licenses *inter alia* with regard to a full 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 Licensee.
- xiii. The Para 23.7 of Part 6 of Appendix B, Schedule 2 to the Rules, and Regulation 10 of the Regulations, are *ultra vires* the Act to the extent they impose obligations on the Licensee over and above those set out in the Licenses.
- xiv. Reference to violations of the “Authority’s directions” is an error apparent on the face of the record, as neither the SCN identifies any direction, nor any earlier directions exist, as issued to the Licensee in relation to the quality of services for the areas the subject of the SCN which allegedly stand violated by the Licensee. To the contrary, the Authority’s directions relating to minimum call sample size vide its settled standard operating procedures stand violated by the Joint Survey and the Independent Re-Survey forming the basis of the SCN.

1.11 In order to proceed further, the matter was fixed for hearing on 19th April, 2022 before the Authority. Mr. Walid Iqbal Advocate Supreme Court (Legal Counsel), Mr. Waqar Advocate High Court, Mr. Ali Aamer Khan (Head Regulatory), Mr. Rashid Ayub (JM Regulatory), Mr. Atique Ahmed (AM RF), Mr. Rizwan Ahmed (Manager RF), Mr. Zain Ali (Manager Legal) and Syed Ali Yasir (SM Legal) 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.

2. Findings of the Authority:

2.1 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 With regard to licensee’s contention of carrying out unilateral survey, it is clarified that 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 In the instant matter, 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-III 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. For a matter of record, it is also relevant to point out that license condition No.6.5.1 of the licensee renewed in 2021 provides that the license requires that the licensee at all times to meet or exceed the quality of service standards described in Appendix-III 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, failing which, the licensee shall be subject to the penalties determined by the Authority in accordance with the Act, Rules or Regulations. The licensee is also required to maintain records of its performance in meeting the quality of service standards, and shall submit them to the Authority on quarterly basis in such format as the Authority may require. The licensee shall maintain supporting records for inspection and technical audit as and when required by the Authority. The licensee shall maintain such records for a period of three years.

2.1.8 With regard to observation of the licensee on selection of areas of survey and quantum / sample of calls/ SMSs / Data used / made to determine the QoS were narrow or smaller survey which is likely to get skewed to the licensee's detriment, 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 its network is available in the survey areas therefore, the licensee's contention pertaining to selection of areas as well as sample size to ascertain the QoS requirement is untenable. 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 It is also pointed out that after providing fair opportunity of hearing, the Authority again carried an independent re-verification QoS as per survey Call Setup Success Rate, SMS Success Rates and Signal Strength (4G) were observed degraded at Charsadda Road. Whereas

Call Setup Success Rates and Call Completion Ratio were found below threshold at Warsak Road.

3. **Order**

3.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority, it is concluded that despite extended all possible time frame to improve QoS standard of licensed services in accordance with the applicable legal regulatory framework, the KPIs of Call Setup Success Rates, SMS Success Rates, Signal Strength (4G) and Call Completion Ratio were found below the required standard of QoS at Charsadda and Warsak Roads respectively, therefore, due to non-adhering the required standards a fine to the tune of Rs. 200,000 (Rupees Two Hundred Thousand) is hereby imposed on the licensee with the direction to pay the same within one week from the date of receipt of this order.

3.2 In case of failure to comply with para 3.1 above, legal proceedings will be initiated against the licensee as per applicable law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 13th day of June, 2022 and comprises of (08) pages only.