



**Enforcement Order under section 23 of Pakistan Telecommunication
(Re-organization) Act, 1996 against Telenor Pakistan (Private) Limited**

No. PTA/Enf-Wireless/Mobile QoS/Verification/136/2022-II/398

Show Cause Notice: 9th June, 2022
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 6th October, 2022

The Issue:

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

Decision of the Authority

1. Brief facts of the case:

1.1 Precisely stated facts of the case are that Telenor Pakistan (Private) 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 26th May, 2004 renewed on 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 the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act"), the Pakistan Telecommunication Rules, 2000 (the "Rules"), the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the "Regulations") the Cellular Mobile Network Quality of Service (QoS) Regulations, 2011 (the "QoS Regulations") and the terms & conditions of the license.

1.3 In order to ensure and monitor the Key Performance Indicators (KPIs) for Quality of Services (QoS) as laid down in the license and QoS Regulations, a survey was conducted in 3rd quarter of 2021 at ten (10) cities i.e., Jhang, Sialkot, Vehari, Dera Ghazi Khan, Bannu, Dera Ismail Khan, Thatta, Tando Allah Yar, Korangi, Malir and eight (8) roads including Lahore to Jhang, Lahore to Sialkot, Multan to Vehari, Multan to Dera Ghazi Khan, Peshawar to Bannu, Bannu to Dera Ismail Khan, Karachi to Thatta and Karachi to Tando Allah Yar. During the survey, it was identified that QoS results were inconsistent with the parameters as laid down in the license and other enabling provisions of applicable regulations. Accordingly, PTA vide

letters dated 20th August, 15th September and 23rd September 2021 shared the QoS results with the licensee and required to carry out a detailed analysis of each non-compliant parameters so as to ascertain the cause of services degradation and subsequently take corrective measures to improve services up to the license standards. In addition, the licensee was also required to submit a detailed report of root cause analysis of degradation of QoS. The licensee vide letters dated 13th October and 25th October 2021 submitted a compliance report and claimed that remedial measures have been taken and QoS KPIs are improved up to the desired licensed/Regulations threshold during the re-drive conducted by the licensee.

1.4 In order to verify the claim of the licensee and to check the status of the QoS KPIs as per applicable regulatory laws, a re-verification survey was carried out during 1st Quarter 2022 at three (03) selected cities namely, i) Dera Ismail Khan; ii) Sialkot; and iii) Tando Allah Yar. However, contrary to the claim of the licensee, the re-verification survey revealed degraded QoS KPIs at the said cities.

1.5 Due to failure on the part of the licensee in maintaining the required standards of quality of service as per clause 1.3 of the Appendix-3 of the license, a Show Cause Notice (SCN) under section 23 of the Act was issued to the licensee on 9th June, 2022 wherein the licensee was required to remedy the aforementioned contravention by bringing and maintaining the required standards of quality of service within fifteen (15) days of the issuance of the SCN and also explain in writing, within thirty 30 days of the issuance of the SCN, as to why an enforcement order should not be passed under Section 23 of the Act for the aforesaid contraventions.

1.6 In compliance of the SCN, the licensee filed interim reply vide email dated 27th June, 2022 contending therein that the analysis of the logs provided by the Authority reflects that KPIs are within the threshold limit. Additionally, the licensee stated that we have taken specific actions to improve our power infrastructure in **Tando Allah Yar** and **D.I. Khan** and further actions are in progress. In the latest drive test around the failed event, the licensee claimed that significant improvement has been found and we are now complying with QoS threshold.

1.7 The reply to SCN was received on 7th July, 2022. Crux of SCN reply is given below:

- (a) *“The SCN has been issued without affording an opportunity of hearing. The Authority has unilaterally issued the SCN after completing the Re-survey and without calling for any prior explanation from the licensee thereby violating the fundamental right of fair trial and due process guaranteed under Article 10-A of the Constitution*
- (b) *Results of the Initial Survey and the Re-Survey in fact confirm the improvement made by the licensee or otherwise reflects that the licensee has been a victim of circumstances beyond its control*
- (c) *Annex-A to the SCN itself, along with the compliance reports submitted by the licensee to the Authority on October 2021, confirm all the quality of service improvement claimed by the licensee, which have been maintained by the*

licensee in most part, but certain shortfalls have recently arisen due to the reasons detailed below:

- i. First, as far as Sialkot is concerned, the results of the Re-Survey verify that the licensee was no longer in breach of any of the prescribed KPI thresholds (as compared to falling short of three required KPI thresholds under the Initial Survey).*
- ii. Secondly, as far as Tando Allah Yar is concerned, comparison of results of the Initial Survey and the Re-Survey demonstrate that both 4G Signal Strength and SMS Success rate had undergone improvement (with the former exceeding the required KPI threshold), and that while there were non-compliances involving two different KPI thresholds under the Re-Survey, namely Call Completion Ratio and Call Setup Success Rate, these cannot be termed persistent breaches as alleged in the SCN.*
- iii. Thirdly, as far as Dera Ismail Khan is concerned, comparison of results of the Initial Survey and the Re-Survey demonstrate that the licensee was found to be in breach of five KPIs under the Initial Survey.*
- iv. Lastly, a majority of the failure locations where the KPIs repeatedly fell short are geographically differ, which shows that, contrary to what has been alleged in the SCN, the breaches or problems were non-persistent.*
- v. Furthermore, the licensee submits that it was in compliance of all required KPI thresholds in the Survey Areas upon its corrective or rectification steps taken after the Initial Survey, and the results behind its breaches of such thresholds as shown by the results of the Re-Survey conducted after the lapse of about six months is the inability of few sites due to increased load shedding in these areas, the level of which has become a matter falling beyond the licensee's reasonable control. One site in Tando Allah Yar and three sites in Dera Ismail Khan were not stable at the time of the Re-Survey due to enhanced load shedding. The licensee has nevertheless already improved, and in process of further enhancing, its power backup infrastructure for the badly affected sites in the Survey Areas significant investment in being done in this regard, as detailed below.*
- vi. One site at Tando Allah Yar, KTA 101 (this is a site shared with Ufone), which was unstable while the Re-Survey was being conducted on 22nd and 23rd March 2022 due to abnormally high load shedding. For this shared site, the licensee has already enhanced its*

power backup with additional of a battery bank and DG/CP phase from the sharing partner, and the subject site is now stable.

- vii. *There was also significant increase in load shedding in Dera Ismail Khan city. However, significant power back up enhancement is in progress as six battery banks are being added at the three problematic sites in Dera Ismail Khan.*
 - viii. *Sub-section (a) of section 6 of the Act requires that, in exercising its functions and powers under the Act, the Authority must ensure that rights of licensees are duly protected. Accordingly, the Authority, instead of penalizing the licensee in the instant circumstances, must support the licensee by exercising its influence over all entities involved in the generation, transmission, dispatch and distribution of electric power to secure stable supply of power to all cellular mobile operators through the national grid. The licensee in any case reserves its right to invoke the force majeure provisions of the licenses to address this problematic situation*
- (d) *The licensee submitted that SCN is issued in violation of the Act, the Rules, the Regulations, the QoS Regulations, and the terms and conditions of the licenses, and the Authority has not complied with the relevant provisions of the Act, the Rules, the Regulations and QoS Regulations to the extend as mentioned below:*
- i. *The SCN is issued in violation of the Act by purporting to prescribe standards for quality of service and imposing obligations or reserving powers for the Authority concerning 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.*
 - ii. *The obligation of the licensee mentioned in 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 condition 3.1 of the licenses do not extend to regulations or orders.*
 - iii. *The SCN applies the quality of service KPIs on a very narrow area basis (drive test route), whereas each of the licenses contemplates the measurement, for the purposes of quality of service enforcement, on a system-wide basis. When viewed on a system wise-basis, the licensee is compliant with its licensed quality of service. 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, then are stipulated in Appendix III to the licenses. To hold otherwise also mean that a drive test in a single remote village would be determinant of the quality of service compliance, ignoring the cumulative*

effect of millions of calls and data packets in the entire region. Such an interpretation is entirely against the provisions of the licenses and not warranted by the Act.

- iv. *The reference to Section 21(4)(g) of the Act is misplaced. The said provision enables inclusion of quality of service standards for “particular persons or areas.....” in the license, and entails a narrower application of such quality of service than the entire service area of the licensee. No particular areas are identified in the licenses for meeting minimum standards for quality and grade of service.*

2. Hearing before the Authority:

2.1 In order to proceed further, the matter was fixed for hearing on 6th October, 2022 before the Authority. Mr. Walid Iqbal Advocate Supreme Court of Pakistan (Legal Counsel) along with Mr. Waqar Abid Advocate High Court, Mr. Raza Zulfiqar (V.P Regulatory), Mr. Ali Aamir (Head Regulatory), Mr. Rashid Ayub (S.M Regulatory) Mr. Syed Ali Yasir (S.M Legal) and Mr. Farrukh Shehzad (R.F Optimize) attended the hearing on behalf of the licensee. Legal Counsel reiterated the same as submitted in reply to the SCN and pointed out that the licensee is always complying with the regulatory laws and license terms and condition in true letter and spirit.

3. Findings of the Authority:

3.1 Matter heard and record perused. After careful examination of record and hearing the licensee, following are the findings of the Authority:

3.1.1 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(2)(b) of the Act is also empowered to enforce and monitor the licenses. Pursuant to the license, the licensee is required 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 by the Authority from time to time.

3.1.2 Section 21(4)(g) of the Act provides that the licensee is under an obligation to provide telecommunication services to particular persons or areas to meet minimum standards for quality and grade of services requirement. With regard to monitor and enforce the license condition, clause 23.7 of part 6 of the Rules, regulation 10 of the Regulations and regulation 8 of the QoS Regulations provide that 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.

3.1.3 The licensee in its reply contended that it is settled law involving regulatory authorities in Pakistan that any enforcement action comprising the issuance of show cause notice to a regulate must be preceded by a participatory adjudication process wherein the regulate is afforded a chance to explain its position before a contravention of law is frame against it. Contrarily, the Authority has unilaterally issued the SCN after completing the Re-Survey and without calling for any prior explanation from the licensee thereby presuming the contravention alleged in the SCN on part of the licensee and thus violating the fundamental right of fair trial and dues process guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. In this regard it is clarified that no unilateral action in the manner as portrayed by the licensee was initiated. Further for a matter of record, it is relevant to point out before issuance of SCN, first survey was carried out and results were shared with licensee directing it to take corrective measures. Accordingly, the licensee submitted analysis report of each non-compliant KPIs and further informed that required remedial measures have been taken and services at all three cities during re-drive has been found improved. However, in contrary, during Second Survey carried out by PTA, the results were found otherwise, thus as a result of degradation of QoS, SCN was issued. Therefore, the assertion of the licensee that due process was not been followed is unjustified.

3.1.4 In accordance with license condition No.6.5.1 of the license, the licensee is required at all the time to meet or exceed the Quality of Service standards described in Appendix-III of the license and QoS Regulations. However, as per the aforesaid QoS survey, the services of the licensee were found non-compliant of with the KPIs of QoS as laid down in the license and the QoS Regulations.

3.1.5 By addressing the issue to meet the obligations of QoS, the licensee contended that as per survey results attached with the SCN along with compliance report submitted by the licensee in October, 2021, confirmed all the quality of service improvement claimed by the licensee, which have been maintained by the license in most part. Relevant paras regarding short fall as provide in reply to SCN is reproduced below:

- i. *First, as far as Sialkot is concerned, the result of the Re-survey verify that the licensee was no longer in breach of any of the prescribed KPI thresholds (as compared to falling short of three required KPI thresholds under the Initial Survey)*
- ii. *Secondly, as far Tando Allah Yar is concerned, comparison of results of the Initial Survey and Re-Survey demonstrate that both 4G Signal Strength and SMS Success Rate had undergone improvements (with the former exceeding the required KPI threshold), and that while there were non-compliances involving two different KPI thresholds under the Re-Survey, namely, Call Completion Ratio and Call Setup Success Rate, these cannot be termed "persistent" breaches as alleged in the SCN.*

iii. *Thirdly, as far as Dera Ismail Khan is concerned, comparison of results of the Initial Survey and Re-Survey demonstrate that the licensee was found to be in breach of only three KPIs and under the Re-Survey, in contrast to being found in breach of five KPIs under the Initial Survey.*

3.1.6 While examining of the contention as provided at para 3.1.5, it can be inferred that though there is an improvement in certain KPIs as mentioned in re-survey result but admittedly six KPIs were also found below the QoS standard as provided in the license i.e., three in Tando Allah Yaar and three in Dera Ismail Khan. The licensee under clause 6.5 of the license is under an obligation to meet or exceed the licensed threshold against all defined KPIs at all times.

3.1.7 As far as observation of the licensee on the survey methodology including sample size and un-literal survey is concerned it is clarified that as per regulation 6 (1) & (2) of the QoS Regulations the Authority may conduct survey either independently or jointly. Thus the survey was carried out in accordance with the applicable regime. More so, the survey results were shared with the licensee for taking all corrective measures.

3.1.8 The assertion of the licensee as communicated vide emails dated 13th October and 25th October, 2021 that remedial measures have been taken and QoS KPIs have been improved up to the desired licensed/regulations threshold do not substantiate the claim of the licensee as insofar re-verification survey in three (03) cities namely, Dera Ismail Khan, Sialkot and Tando Allah Yar in Q1 of 2022. The re-survey results are as under:

City Name		Tando Allah Yar	DI Khan	Sialkot
Key Performance Indicators	Threshold	Results		
Network Accessibility	>99%	99.96%	99.90%	99.51%
Service Accessibility	> 98%	96.00%	90.28%	99.05%
Call Connection Time (Seconds)	≤ 7.5	4.24	6.10	4.82
Call Completion Ratio	> 98%	97.92%	96.41%	98.56%
Mean Opinion Score	≥ 3	3.44	3.2	3.3
ISHO for CS Voice (Only)	≥ 98%	N/A	N/A	N/A
RAB Setup Success Rate (3G)	> 98%	100%	100%	100%
SMS Success Rate	> 99%	98.98	96.24%	100%
SMS End to End Delivery Time (Seconds)	≤ 12	4.73	10.55	3.36
Data Throughput -HTTP Download (3G)	≥ 256kbps	2686.46	939.90	2677.96
Signal Strength RSCP (3G) of minimum	-100dBm with 90% Confidence Level	-74.9	-64.4	-64.2
		99.99%	100%	100%
Data Throughput - HTTP	≥ 2Mbps	4.21	2.04	3.84

Download (4G)				
Signal Strength RSRP (4G) of minimum	-100dBm with 90% Confidence Level	-85	-76.8	-78.7
		95.31%	98.89%	98.21%

4. Order:

4.1 Forgoing in view of the above mentioned facts coupled with available record, the Authority has reached to the conclusion that licensee i.e. Telenor Pakistan (Pvt.) Ltd. has failed to comply with the Quality of Services **KPIs** in 3rd Quarter 2021 survey in 10 cites. More so, as a result of re-verification survey to ascertain the compliance of KPIs for QoS as conducted in three cities, the licensee has also been found non-compliant with regard to observing parameters of QoS. Thus considering the persistent contravention of license terms and conditions, a fine to the tune of Rs.6,000,000/- (Rupees Six Millions) is hereby imposed with the direction to pay the same within a period of one month from the date of receipt of this enforcement order. -

4.3 The Authority hereby further directs the licensee to improve the service quality to meet or exceed the target value of QoS parameters as per the license standards and QoS Regulations.

4.4 In case of failure to comply with para 4.3 above, legal proceeding 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 27th day of December, 2022 and comprises of (8) pages only.