

PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS. F-5/1 ISLAMABAD

Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 read with sub-rule (4) of Rule 9 of the Telecom Rules, 2000, in the matter of Pakistan Telecom Mobile Limited (TJ-fone) regarding OoS

File No. 14-587/L&A/PTA/09

Date of Issuance of Show-cause Notice:	17 th December, 2009
Date of Hearing:	6 th April, 2010
Venue of Hearing:	PTA HQs, Islamabad

The Authority Present:

Dr. Mohammed Yaseen:	Chairman
S. Nasrul Karim A. Ghaznavi:	Member (Finance)
Dr. Khawar Siddique Khokhar:	Member (Technical)

The Issue:

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

Decision of the Authority 1.

Brief Facts:

1.1. M/s Pakistan Telecom Mobile Limited (U-Fone) (the "licensee") with license No.PTA/CMT(4)/PTML dated 31st August, 1998 (the "license") issued to it by Pakistan Telecommunication Authority (the "Authority") was, on 25th November, 2008 issued a show cause notice (the "notice") under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act") for contravening the terms and conditions of the license pertaining to QoS standards.

1.2. **Powers of the Authority under Section 23 of the Act:** whenever provisions of the Act, the rules framed thereunder or the terms and conditions of licence are contravened by a licensee, the Authority may proceed against it with the issuance of a show cause notice. For ready reference, the said section is reproduce as under;

1) *Where a licensee contravenes any provision of this Act or the rules made thereunder or any term or condition of the license, the Authority [or any of its officers not below the rank of director] may by a written notice require the licensee to show cause within thirty days as to why an enforcement order may not be issued.*

(2) *The notice referred to in sub-section (1) shall specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention.*

(3) *Where a licensee fails*

- (a) *respond to the notice referred to in sub-section (1); or*
- (b) *satisfy the Authority about the alleged contravention; or*
- (a) *remedy the contravention within the time allowed by the Authority, for any of its officers not below the rank of director], the Authority[or any of its officers not below the rank of director], may, by an order in writing and giving reasons—*
 - i) *levy fine which may extend to three hundred and fifty million rupees; or*
 - (ii) *suspend or terminate the license, impose additional conditions or appoint an Administrator to manage the affairs of the licensee, but only if the contravention is grave or persistent.*
- (4) *Without prejudice to the provisions of sub-section (1) and sub-section (3), the Authority [or any of its officers not below the rank of director] may, by an order in writing, suspend or terminate a license or appoint an Administrator, if the licensee—*
 - (a) *becomes insolvent or a receiver is appointed in respect of a substantial part of the assets;*
 - (b) *being an individual, become insane or dies.*

Explanation—For the purpose of this section, the Administrator shall be appointed from amongst the persons having professional knowledge and experience of telecommunication.

2. Relevant Provisions of the Act, the Telecom Rules 2000 (the "Rules"), the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the "Regulations") and the terms and conditions of the license Contravened by the licensee regarding QoS:

- 2.1. Clause (d) of section 4 of the Act, the Authority is under obligation to promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan.
- 2.2. Clause (g) of sub-section (4) of section 21 of the Act, obligations to provide telecommunication service to particular persons or areas to meet minimum standards for quality and grade of services requirements.
- 2.3. Para 23.7 of Part 6 of the Rules and regulation 10 of the Regulations empower the Authority 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 to ensure that users of telecommunication services get such quality of service as laid down in the license, regulations, and/or KPIs.

2.4. Regulation 9 of the Regulations the licensee is obliged to provide good quality of service to its customers.

2.5. Clause 5.1 of the license obliged the licensee that its 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.

3. Issue Within Show Cause Notice:

3.1 The Authority, through its Zonal offices at Rawalpindi, Peshawar, Lahore, Karachi and Quetta conducted surveys during the year 2009 [i.e., at: (i) Rawalpindi Zone from 21st March, 2009 to 10th April, 2009, (ii) Peshawar Zone from 15th June, 2009 to 18th June, 2009, (iii) Lahore Zone from 22nd October, 2009 to 31st October, 2009, (iv) Karachi Zone from 3rd November, 2009 to 10th November, 2009 and (v) Quetta from 15th November, 2009 to 17th November, 2009].

3.2 Results of the survey showed that the QoS being provided by the licensee was far below than the required standard. The detail of the average results of surveys is as under:

Voice;

Network Down Time < 1%	Grade of Service < 2%	Call Completion Ratio > 98%	Call Connection Time < 5 Sec	Call Quality (MOS) > 3
0	1.49	96.22	8.39	1.94

SMS;

Service Accessibility ≥ 99%	Access Delay ≤ 2 Sec	End to End Delivery Time < 5 Sec
100	4.55	11.28

3.3 The aforesaid survey results established that the licensee has contravened Clause (d) of section 4 of the Act, clause (g) of sub-section (4) of section 21 of the Act, Regulation 9 of the Regulations and Clause 5.1 of the license by failing to provide the required grade of telecommunications services to its customers, hence, the notice under section 23 of the Act.

4. Licensee's Response to the Show Cause Notice:

4.1 The licensee's response to the notice dated 15th January 2010 is reproduced in verbatim as under:

Reply for/on behalf of Pak Telecom Mobile Limited (PTML)

We act for, and address you on behalf of, Pak Telecom Mobile Limited ("PTML") in the matter of your Show Cause Notice No. 14-587/L&A/PTA/09/147 dated 17.12.2009 ("SCN") whereby the Pakistan Telecommunication Authority (the "Authority") has sought its reply with respect to, inter alia, the alleged violations and contravention in maintaining the required standard of quality of service at par with clause 5.1 of Clause 5.1 of the license dated August 1998 (the "License"). We provide you with our response, as follows:

At the outset, we assure you that PTML has always taken all possible measures to ensure full compliance to its license obligations as well as the Pakistan Telecommunication (Reorganization) Act, 1996 (the "Act") and the Pakistan Telecommunication Rules (the "Rules ") and Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the "Regulations ") made thereunder. The matter of Quality of Service has not been an exception to this and we have been striving to observe the same in its true letter and spirit as envisaged in our License. As a crucial market player, initiating large-scale investments in the telecom sector, PTML has contributed significantly to the economic growth of the telecom industry in the region with contribution to the national exchequer through taxes, revenue generation and, direct and indirect employment opportunities. It is also pertinent to note that PTML (and other operators as well) face several problems of diverse origination which at times adversely affect our network and are beyond our reasonable control. Such problems include, for instance, some lapses on part of other operators in providing interconnection facilities, power shortages, the prevalent security situation in almost all parts of the country, external interferences and jamming in the allocated spectrum. Furthermore, to ensure quality of service, PTML has taken several measures to overcome the problems and has conducted internal audits and surveys from time to time also keeping pace with the changing trends in technology.

Preliminary Objections

1. That the SCN by its own contents contained in para 13 is misconceived and may at best be considered as a notice under Regulation 10(3) of the Regulations notwithstanding the PTML's objection that in the absence of the detailed inspection report having been furnished for the referred survey's as is a mandatory requirement of the said Regulation 10(3) hence the compliance period of 30 days has not initiated as yet. Therefore, this SCN -fmay be treated at best as a notice under Regulation 10(3) and the detailed inspection report may be furnished to PTML in order to allow PTML to take remedial measures where and if necessary and submit a compliance report. It is pertinent to mention that PTML notwithstanding that it has not received a detailed inspection report, submitted a compliance report on 8th January, 2010.

2, That in para 9 of the SCN the survey referred to was purportedly carried out by the Pakistan Telecommunication Authority (the "Authority") in the following zones on referred dates;

- a. Rawalpindi Zone: 21st March to 10th April, 2009*
- b. Peshawar Zone: 15th June to 18th June, 2009*
- c. Lahore Zone: 22nd October to 31st October, 2009*
- d. Karachi Zone: 3rd November to 10th November, 2009*
- e. Quetta Zone: 15th November to 17th November, 2009*

The SCN does not clarify the problems associated with the service inspection/survey results conducted unilaterally by the Authority in Rawalpindi, Peshawar, Lahore, Karachi and Quetta for the period from March 2009 to November 2009 (the "Period"). Mere average results of surveys with reference to voice and SMS do not identify the exact problems with the service. This SCN has been issued without taking into consideration the past practice of sharing survey data with the operator so as to enable it to improve the services, and is, therefore, misplaced and liable to be withdrawn/discharged. Nevertheless, no inspection report has ever been furnished to PTML in respect of these specific surveys and furthermore, as already submitted after furnishing of the said

inspection report the licensee has a remedial period available and only upon failure of the licensee to submit a compliance report, the Authority may initiate legal action under Section 23 of the Act. Hence, the current SCN is premature and therefore, not maintainable having been issued without valid cause, due authority and jurisdiction.

3. That the reliance of the SCN on the letter dated 29th September, 2008 is incorrect. The said letter of 29th September, 2008 only provided intimation of a survey to be carried out by the Authority in October, 2008 (PTML showed its concerns on the conduct of survey vide its letter dated 13 October, 2008 but the same was not addressed by the Authority) which was thereafter, carried out and completed. Therefore, the same has no nexus with the current surveys purportedly carried out sometime between March 2009 and November 2009. The Authority started a consultation process vide its letter No. 3-50-(Misc)/2009/Enf/PTA, dated June 22, 2009 and a presentation was given by the Authority on QoS parameters on June 24, 2009. The Cellular Mobile Industry in response to the same shared its concerns on Quality of Service (the "QoS") Surveys Methodology with the Authority, vide its joint letter dated July 8, 2009, wherein problematic areas were identified, and certain recommendations were also given to the Authority for consideration before finalization of the methodology on QoS surveys, but it appears the recommendations of the Industry were never taken into account by the Authority. Hence, PTML had no notice of any such surveys as such and in the absence of any detailed and proper inspection report or established parameters of such surveys, the same is not a survey(s) as carried out in established past history/practice or survey (s) or inspection as visualized under the Act, Regulations and the established international standards contained in the ETSI Specifications.

4. That the Authority issued a letter dated 3rd July, 2009 to PTML relating to a survey purportedly carried out in Dadyal & Kotli between 18th to 21st March, 2009 and in Nowshera and Highways between 15th to 18th June, 2009. The Annexure-A to the said letter was a summary report of the purported survey and no detailed and proper inspection report was ever furnished to PTML, as is otherwise required under Regulation 10(3). The current SCN does not refer to any survey carried out in Dadyal, Kotli or Azad Jammu Kashmir and hence the letter of 3rd July, 2009 to that extent is irrelevant with reference to the current SCN. Notwithstanding the fact that in the absence of a proper inspection report, the said letter of 3rd July, 2009 could not be deemed to be a notice under Regulation 10(3), it is submitted that PTML infact responded in detail to the said letter vide its letter dated 28th July, 2009 in addition to an earlier submission put before the Authority by the entire industry jointly vide its letter dated 8th July, 2009 in response to the briefing organized by the Authority in relation to Quality of Service and survey methodology. None of the said objections raised by the industry and the PTML have been addressed to nor was the substance of the communication of PTML dated 28th July, 2009 properly addressed to, hence presumed to have been accepted and the letter dated 3rd July, 2009 becoming redundant thereafter.

5. That PTML is in compliance with the provisions of its License specifically Clause 5.1 whereunder it's system is designed and operating for a 99.5% availability and with no more than 3% blocking in switching. Being in compliance with the terms of its License the said SCN against PTML is misconceived and not maintainable; hence liable to be withdrawn.

6. That PTML is not in violation of any Regulation or the Act, hence there is no basis for the issuance of instant SCN under Section 23 of the Act.

7. That PTML has at all times been providing the required grade of telecommunication services to its customers as per the terms of its License and the Regulations and the Act, and has at all times maintained its quality of service as per the technical specifications of its system. Hence, the SCN is without any basis.

8. That notwithstanding the submissions on issue of jurisdiction and maintainability, it is submitted that the survey purportedly carried out by the Authority on the dates mentioned in para 9 of the SCN was a unilateral survey in the absence of any representative of PTML. Furthermore, no detailed survey/inspection report has ever been provided consequently it is not possible to verify the "results" which have been stated in the SCN, which PTML contests and requires a survey to be carried out in the presence of PTML's authorized representative to ensure the validity of the report and results. The august Authority is required to provide to PTML the inspection report and not only results which do not disclose the basis for such findings.

Furthermore, the said survey, to the knowledge of PTML, did not follow even the ETSI specifications for field surveys for mobile services which are the recognized international standard. Therefore, the said "results" of the survey cannot be made the basis for any action against PTML or be considered a valid representative of PTML's quality of service.

9. That the Authority has to date not issued any specific Quality of Service specifications which are explicitly required if PTML and other licensees are required to ensure compliance. Such specification of QoS are available under the ETSI specifications which are internationally recognized standards and which PTML is following in the absence of similar standard having been setup by the Authority. The industry including PTML have in the past raised this issue with the Authority however, the same has been consistently ignored and avoided. The Authority, therefore, cannot make an undefined standard to be the basis for any performance obligation of PTML.

10. That the parameters or key performance indicators (KPIs) as contained in the letter of 29th September, 2008 or as published in the news papers by the august Authority in December 2009 have no correlation with the survey "results " as stated in the SCN as the general specification had been intimated only for the survey to be conducted in October 2008 only. Furthermore, the KPIs so stated are infact not contained in any Regulation or the Act or PTML's License; hence are not applicable to PTML. Additionally the KPIs mentioned relating to QoS for SMS have neither been defined in the past nor form part of PTML's obligations under its License or the Act.

Parawise Reply:

1. That the contents of para 1 are a matter of record, however, even if the contents are to be considered correct then the SCN has been incorrectly issued to PTML as the SCN relates to the license No. MCT-OI/RBS/PTA/2004, whereas, the license of PTML is numbered PTA/CMT(4)PTML dated August 1998. It is pertinent to note that the terms of PTML's license are different to the terms of the licenses for similar services issued in 2004 or renewed subsequently under the Mobile Cellular Policy of 2004.

2. That the contents of para 2 are correct with the exception that PTML is not obligated to act beyond the said Rules, Regulations and Act and furthermore, the Authority cannot

by implication introduce an obligation under the said Rules or Regulations without properly notifying the same and with the notice and knowledge of PTML.

3. That the contents of para 3 are a matter of record.

4. That the contents of para 4 are a matter of record.

5. That the contents of para 5 are misleading as the provisions of Regulation 10(2) have to be read with Regulation 10(3) and are subject to the provisions of Regulation 10 of the Regulations as a whole. The survey conducted by the Authority purportedly under Regulation 10(2) cannot be considered a proper survey in the absence of an inspection/survey report. As a fundamental principle of law, if an ex-parte survey is carried out by the Authority, PTML has an inherent right to view the detailed inspection report and respond to the same including objections to results if the same can be shown to be incorrect based on the constant surveys and inspections carried out by PTML itself as part of its internal quality control systems. In the absence of the same, the said Survey has no legal value or validity.

It is submitted that the reference to "Para 23.7 of Part 6 of the Rules" is unknown to PTML and can only be responded to once identified by the Authority.

6. That the contents of para 6 are correct except that Regulation 9 also mandated that the "Authority shall set out and designate the criteria for maintaining quality of service in the terms of each license or through regulation or issue Key Performance Indicators". The terms contained in PTML's license are being adhered to and there is no violation of the same.

Furthermore, in the absence of the Authority having set out the criteria through the Regulations or notified KPI's LPTML cannot be obligated with a duty which is yet to be defined.

7. That the contents of para 7 are correct and PTML as submitted is in complete compliance with Clause 5.1 of its license.

8. That the contents of para 8 are of no relevance since the letter dated 2nd September, 2008 firstly only lists the general "parameters of QoS" without such parameters having been actually defined in terms of technical specifications. Most of these parameters are dependent on performance of third party networks and systems as part of interconnect and termination structures to the Authority's knowledge. As a fundamental issue when verifying QoS completely different set of technical specifications for inspection are to be adopted in terms of On Net and Off Net calls. This appears to have not been done. Secondly, the letter dated 29 September, 2008 was in reference to a survey to be carried out in October, 2008 and upon completion of the said survey and in the absence of any Notice of Compliance under Regulation 10(3) issued to PTML by the Authority as a consequence of the October, 2008 survey, the matter is considered as closed. Hence, the said letter has no relevance or basis to the current survey being relied upon by the Authority.

It is however, pertinent to mention that PTML in reply to the Authority's letter dated 29th September 2008 requested the Authority (vide its letter No. PTML/GR/PTA-8 dated October 13, 2008) that:

- a. *the method (operational testing) may clarified;*
- b. *Details of test equipment may be indicated;*
- c. *A format for documenting the readings be made;*
- d. *Drive Test Routs, Call Services Profile, Sample size and Drive test logs may be shared with PTML;*
- e. *The results should be witnessed by concerned operator and signed by the representative with remarks if possible.*

Nevertheless, in reply to the said letter of PTML the Authority vide its letter No.3-1/1008/Enf/PTA dated October 23, 2008 apprised simply that the survey was being conducted as per terms of license issued to PTML and the past history. It is pertinent to mention that no such survey in terms of Authority's letter dated September 29, 2008 was ever so conducted.. In past, QoS surveys were conducted in the presence of representatives of the respective Cellular Operator.

PTML in response to Authority's letter dated 3 July 2009 again showed its concerns through its letter dated 28th July 2009 about the method of conducting surveys and re-agitated its concerns for consideration of the Authority, however, it appears the same were not considered.

9. That the contents of 9 are disputed and not admitted. The purported survey was carried out without notice to PTML or PTML's presence hence ex-parte. PTML has not been provided with the detail inspection/survey report and in the absence of the same the "results" put forth by the Authority can neither be accepted nor do they have any legal validity. Furthermore, PTML has had no opportunity to respond to the inspection/survey report as it is patently clear from PTML's internal inspections that the "results" contained in the SCN are based on incorrect or incorrectly selective data. The said survey and the purported "results" are both denied and cannot form the basis of the SCN.

Interestingly, the only result as stated in the SCN which relates to an obligation of PTML under its License and the law in terms of system availability shows that PTML is in complete compliance with this obligation even based on these questionable survey results. Hence, the SCN is clearly misconceived.

10. That the contents of para 10 are denied. PTML has not failed in fulfilling any of its legal and license obligations and at all times is providing the required grade of telecommunication services to its subscribers. The Authority has provided no record, inspection report, or basis for this allegation which in the absence of being properly substantiated cannot be made the basis of the SCN.

11. That the contents of para 11 are denied. The Authority vide its letter of 3rd July, 2009 referring to some other survey and not the purported survey referred to in the SCN, sought action from PTML in terms of QoS. In response to that, PTML provided a detailed explanation vide its communication of 28th July, 2009, in addition to the submissions previously made by the entire industry jointly on 8th July, 2009 None of these submissions

of the industry or PTML have been considered or acted upon by the Authority. No Notice has been issued by the Authority which PTML has failed to respond to,

12. That the contents of para 12 are denied. The alleged failure on the part of PTML is misconceived as PTML has at all times fulfilled its obligations under the Act, Rules, Regulations, or under its license. At no time has PTML failed to fulfill the QoS obligations and furthermore, the august Authority has at no time proceeded in the manner provided under the Regulations in terms of setting out the standard of QoS or the conduct of inspections and surveys. It is submitted that in the absence of any violation on the part of PTML and the lack of definition of QoS standards and technical specifications for conduct of surveys, PTML cannot be found to have violated any provision of the Act, Rules, Regulations, or its license; hence cannot be penalized for any such violation. The said SCN as submitted earlier is misconceived and not maintainable.

13. That the contents of para 13 are misconceived as is evident in the said para while purporting to be a Notice under Section 23 of the Act of 1996 requires PTML to remedy the purported contravention, which it is submitted is a process provided for under Regulation 10(3) in the form of a Compliance Notice. Therefore, at best this SCN admittedly can only be considered as a Compliance Notice under Regulation 10(3) however, the time prescribed for a reply can only be initiated upon the furnishing of the detailed survey/inspection report by the august Authority. PTML is submitting this reply to the SCN without prejudice to its objections that the said SCN infact is not a SCN under Section 23 of the Act and rather a Compliance Notice, incomplete as it may be, under Regulation 10(3).

14. That the contents of para 14 are misconceived in that the provisions of Section 23 of the Act and other Rules do not apply as this SCN is not a SCN within the meaning of Section 23 of the Act.

It is respectfully submitted that on the basis of the above submissions of PTML and further detailed submissions and consideration of record the Authority may either withdraw this SCN or cancel the same without any further action thereon as being misconceived.

It is further submitted that the Authority may consider the detailed submissions previously put forth by the industry and PTML on the issue of QoS and define specifically QoS parameters and KPIs as well as define the technical specifications to base the future surveys to be conducted by the Authority so as to ensure that the PTML as a licensee is duly aware of its obligations, if any, under the law.

It is further submitted that PTML may be afforded an opportunity of a hearing so as to respond in detail to the contents of the SCN. In view of foregoing submissions, it is prayed that the SCN dated 17.12.2009 being unfounded, misconceived and untenable under the Act, the Rules and Regulations may kindly be withdrawn without any further action thereon.

5. Findings of the Authority

- 5.1 The matter was fixed for hearing on 21st April, 2010 whereby licensee reiterated their argument that PTA had failed to furnish a comprehensive Inspection report based on Regulation 10(3) of PTA Regulation 2006 and that

the 'survey results' could not be conceived as a detailed report as envisaged under the Regulations, thus show cause notice was misconceived and Section 23 could not apply.

5.2 The survey was conducted in accordance with the standards set out by the Authority and in light of the licensee's obligation under the license, and the methodology of surveys already provided to the licensee. The license provides short term and long term targets. Under the license and the regulations, the licensee is obliged to meet or exceed the quality of service standards provided in the license and KPIs, which it failed to maintained, hence, show cause is not contrary to license conditions.

5.3 The matter is scrutinized in all aspects and reached the conclusion that the survey was conducted in accordance with the standards set in KPIs and the methodology of surveys already provided to the licensee and the results were subsequently shared as well. It is in light of these findings, that the Authority finds the licensee has failed to provide the required grade of telecommunications services to its customers which amounts to grave violation of the prevailing regulatory laws, directions of the Authority and the terms and conditions of the licence.

6. Order of the Authority

6.1 The licensee has failed to satisfy the Authority on the aforementioned contraventions made by it regarding the mandatory level and standard of Quality of Service, the licensee is, therefore, directed to remedy the aforementioned contravention by bringing and maintaining the required standards of quality of service within twenty nine (29) days of the issuance of this order.

6.2 Next survey shall be conducted by the Authority after the aforementioned period of twenty nine (29) days and if the licensee is found again in violation of para 6.1, above, final determination shall be issued under sub-rule (5) and (6) of rule 9 of the Regulations otherwise the notice shall be favourably disposed of.

S.Nasrul Karim A. Ghazanvi
Member (Finance)

Dr. Mohammed Yaseen
Member (Technical)

Dr. Mohammed Yaseen
Chairman

This determination signed on 25 of May,2010 and comprises 10 pages

