



Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Pakistan Telecom Mobile Limited (U-fone)

No.PTA/RA/ Consumer-Protection/Legal Issues/128/2023/929

Date of Show Cause Notice: 8th December, 2023
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 20th March, 2024

Panel of Hearing

Maj. Gen. Hafeez UR Rehman (R): Chairman
Dr. Khawar Siddique Khokhar: Member (Compliance and Enforcement)
Muhammad Naveed: Member (Finance)

The Issue:

“Non-compliance of the Order dated 18th August, 2023 passed by the officer of the Authority on the issue relating to International Roaming Charges”

Decision of the Authority

1. Brief facts of the case:

1.1 Precisely stated facts of the case are that Mr. Abdul Waheed (the “**complainant**”) filed a complaint dated 8th June, 2023 before the Consumer Protection Division, PTA being aggrieved from excessive billing raised by Pakistan Telecom Mobile Limited (the “**licensee**”) on account of International Roaming (IR) charges against postpaid number 0333-5117775 during his visit to Italy/Spain on 20th March, 2023. After providing an opportunity of hearing to the complainant and the licensee, the said complaint was disposed off vide order dated 18th August, 2023 in the following manner:

- i. *The complainant is not under any obligation to pay bill against usage of service on the account of data on International Roaming over and above the credit limit i.e. Rs. 15000/-.*
- ii. *PTML (Ufone) is directed not to suspend or terminate the telecommunication services with regard to instant matter. The services of the complainant shall not be suspended or terminated in this regard.*
- iii. *PTML (Ufone) is also required to provide / share comprehensive procedure as already been directed through the “Decision of the Authority passed in the Appeal filed by Creative Electronics (Pvt.) Limited” dated 16th November 2017 as soon as possible.*

1.2 In light of said decision, the licensee vide letter dated 12th October, 2023 was also required to provide the implementation status of the same. However, the licensee did not pay any heed to comply with the same.

1.3. Due to failure on the part of the licensee in complying with the decision / order dated 18th August, 2023 and submitting the implementation status thereof, a Show Cause Notice (SCN) under section 23 of the Act was issued to the licensee requiring therein to remedy the aforementioned contravention by submitting a compliance report/ updated status of the said decision / order within three (03) days of the SCN and also to explain in writing, within thirty (30) days of issuance of this notice, as to why an enforcement order should not be passed under section 23 of the Act.

1.4. The licensee vide letter dated 5th January, 2024 submitted reply to the SCN. Relevant submissions are as under:

- i. *It is operating its functions on automated processing system, therefore, chance of wrong deduction against any account is very rare. Furthermore, PTML subscribers are charged only for those calls/GPRS/SMS which have been made from their respective connections.*
- ii. *Thoroughly investigated the reported issue and found no discrepancy. Moreover, as per PTML records, valid internet usage has been observed on International Roaming against Complainant's Ufone number, and same has been charged as per the standard IR SMS Tariff. Furthermore, it is pertinent to mention here that while roaming internationally, billing updates are dependent upon the usage information received from PTML's roaming partner which is primarily authenticated as per IR Global Standards. Under the circumstances, the charges levied against Complainant's Ufone number are correct and authentic.*
 - a. ***In this regard, all details are mentioned on below website link: <https://www.ufone.com/selfcare/app/tariff/postpay-roaming-tariff.php>***
- iii. *In furtherance to that, the licensee submitted the following legal grounds:*
- iv. *The IR billing is dependent upon logs by the service providers abroad. The IR facility was activated upon the request of the Complainant. Moreover, mainly on account of the technical limitation, PTML does not have real time IR usage detail. Hence, even if PTML in its own interest wanted to disconnect the mobile number due to charges exceeding security deposit, PTML couldn't have done so. Therefore, passing the Order/issuing the SCN on the grounds that PTML should have enforced credit limit beyond security deposit on real time basis is flawed and not enforceable.*
- v. *The terms and conditions of Customer Service Agreement Form (hereinafter 'CSAF') clearly provide that the Complainant agrees to and accepts all the terms and conditions. Moreover, it is imperative to state here that the terms and conditions of IR are also available on PTML's website. The terms and conditions also state that the PTML will determine an initial appropriate credit limit for the Complainant. The call charges shall be determined exclusively by the PTML on the basis of call/billing details recorded by the PTML. As per the applicable terms and conditions, PTML is entitled to disconnect the services on non-payment of charges.*
- vi. *The IR terms and conditions are available on PTML's website, and it states that while roaming, Complainant may be charged up till {30} days of their last usage and can exceed their credit limit.*
- vii. *The IR activation process mentioned on PTML's website states that PTML will not be liable to waive off charges for any accidental/un-intentional data usage*

while roaming outside Pakistan which might have occurred without the knowledge of Complainant. PTML will not be liable for postpaid customers exceeding their respective credit limits in case of delay in receiving roaming usage/billing information from roaming partner/roaming network.

- viii. *The intimations for the IR usage detail of data are sent to the user every (4) hours showing volume of internet data usage.*
- ix. *The PTA held that PTML should have discontinued IR or mobile connection of the Complainant after IR services up to the credit limit of security deposit of PKR 15000 had been utilized, which approach is flawed, for the following:*
 - a) *There were no such instructions and terms and conditions of the CSAF requiring PTML to terminate IR.*
 - b) *real time billing for IR and related logs and charges are generated and maintained by foreign operators and not by PTML therefore, PTML was not able to monitor IR charges on its system in Pakistan on real time basis.*
 - c) *In normal course of business, the security deposit can only be enforced in relation to charges related to licensed services in Pakistan. IR security deposit can only enforce once such charges are made available to PTML by roaming partner operator in order to secure its interest. However, requirement of such security deposit and restricting usage of mobile communication services after the lapse of security deposit is neither legal nor contractual requirement, and usage of mobile communication services by the Complainant beyond the security deposit does not disentitle PTML from recovering charges for such services.*
 - d) *The PTA has no legal authority to adjudicate upon civil rights between PTML and the Complainant, which can only be adjudicated upon by relevant civil courts in accordance with applicable law(s). Therefore, PTA acting as arbitrator under CSAF to settle dispute between the parties, can only express its opinion and has no authority to impose such decisions against PTML.*
- x. *The said SCN could not be issued under S.23 of the PTR, 1996, as the same provides that the Authority may by a written notice require the licensee to show cause where a licensee contravenes any provision of this Act, or the rules made thereunder or any term or condition of the licensee.*
- xi. *The licensee contended that above in view and pendency of CMA 115/2023 titled 'PTML versus PTA etc.', before the Islamabad High Court, the instant matter may be kept pending until final disposal of the aforesaid litigation, in the best interest of justice.*

1.5. In order to proceed further, the matter was fixed for hearing before the Authority on 20th March, 2024. Mr. Naveed K. Butt (GCRO), Mr. Amer Shafique (VP Regulatory Affairs), Mr. Irtazaa Afzaal (GM Legal) and Mr. Aziz ur Rehman (SM Reg. Affairs) attended hearing on the said date on the behalf of the licensee. The licensee reiterated the same as contented in reply to SCN that it is technically not possible to check IR charges before billing reconciliation. Pursuant to the hearing, the licensee vide letter dated 28th March, 2024 was also required to provide input / feedback on IR issue. Accordingly, the licensee responded vide letter dated 15th April, 2024. The queries and reponse are tabulated as under:

Sr. No.	PTA Queries	Licensee Response
i.	Why package based solution for	We do not have online charging in these destinations for

	post paid subscribers has not been implemented so far at prime/important places/destinations including the place visited by the complainant	the time being, which is a pre-requisite for launching a bucket. Moreover, bi-lateral discounted rates are not available because of which the standard rates are applied which makes the bucket expensive for the consumer
ii.	Provide a list of operators with countries where package-based IR agreements have been signed.	Contracts are not package-based; However, we have launched following packages for PTML base: KSA/UAE Data Buckets UK,USA & Turkey Data Buckets Spain Data Buckets Malaysia, Thailand & Singapore Data Bucket
iii.	Provide a list of operators with countries where the package-based IR facility agreements are in the process of being signed.	International Roaming Contracts are not packaged based. However, we have launched following IR. Package(s) for PTML customers based on volume-based discount deal(s) with certain operators in following countries: a. KSA/UAE Data Buckets All Operators b. UK,USA & Turkey Data Buckets UK:EE, Telefonica, Vodafone-JT Telecom; USA-T Mobile, AT&T, Limitless; Turkey- Vodafone, Turkcell c. Spain Data Buckets- All Operators d. Malaysia, Thailand & Singapore Data Buckets - All Operators.
iv.	Why the details of security amount/credit limit of postpaid subscribers, opting for international roaming, cannot be passed on to the foreign operator/roaming partner same as the balance of prepaid subscriber on IR is conveyed to the roaming partner and services are stopped once that balance is consumed.	No balance information is communicated to the Roaming Partner in case of both Prepaid & Postpaid. This scenario does not exist for the prepaid subscribers however, for postpaid subscribers as explained in point 1, realtime/online charging is being implemented in a phased approach. The technical solution has been finalized and commercial roll out will hopefully be completed within the next few month covering 90 % of the international roaming footprint.
v.	List the operators with countries where the package-based IR agreement has not been initiated or not considered.	After the online charging is implemented (in the destinations where online charging is available), subscriber services will be stopped after the complete security deposit is consumed. Just for the sake of clarity, we will be able to provide online charging in around 90% of the PTML footprint (130 countries) due to the roaming partner limitations. This will cover all major destinations
vi.	Provide comprehensive details of the packages offered, including tariffs, its value and security deposit, resources, where IR package-based solutions are available. Are subscribers well-informed about charges prior to activation of package-based IR services?	All buckets are advertised on PTML website and their respective prices are clearly mentioned over there. When subscribing via the customer USSD menu, a customer is shown the price and resources of each package before subscription. Hajj Data Bucket 7000 MBs @ PKR 4000 for 40 days KSA/UAE Data Buckets 1GB@ PKR 999+tax for 30 Days 4GB@PKR 2,499+ tax for 30 Days UK,USA & Turkey Data Buckets 1GB@699+ tax for 30 Days 4GB@2.099+ tax for 30 Days Spain Data Buckets

		1GB@PKR 2,199+ tax for 15 Days Malaysia, Thailand & Singapore Data Buckets 1GB@PKR 1,799 for 15 Days 4GBs@PKR 4,999 for 30 Days
vii.	Details about other operators offering package-based IR roaming in the location visited by the complainant (Italy/Spain). If no operator is in agreement with PTML for package based IR facilities then was PTML now the tariff of IR facilities in the said country.	As per information available on their website, Zong does not offer any data bucket for Spain or Italy. As per Information available on their website, Jazz offers the following Data buckets for Spain or Italy: 100MBs@PKR 300 for 1 Day 500MBs@PKR 1500 for 7 Days 1000MBs@PKR 2,500 for 7 Days 3000MBs@PKR 5,500 for 30 Days 5000MBs@PKR 8,500 for 30 Days PTML have started offering package-based IR Services in Spain as well. In coming months, we will keep adding all major destinations in a phased manner.
viii.	As per claim of PTML, details of data consumed was sent to complainant after every 4 hours. Similarly why the applicable charges/amount against same data consumed during the given 4 hours was not sent to the complainant	This feature is a result of online charging which is currently not being present in all the destinations. After the online charging is implemented, real time information (both volume and charges) will be sent to the subscriber and subscriber services will be stopped after the complete security deposit is consumed.
ix.	Determine whether any SMS or information was sent to subscribers at the time of using IR services regarding the tariffs to be applied during roaming.	Following messages is shared: You are using Mobily in KSA, Standard charges are: (2500 MBs @ Rs 980 for 30 Days & 5000MBs @2100 for 30 Days) Outgoing Local call 0.36/Sec Outgoing Pakistan 0.36/Sec Incoming 0.57/Sec Internet 4.92/MB SMS 11.95 To avail promotional internet roaming bucket in KSA dial *506# 1000 MBs@ Rs 490 for 30 Days.
x.	Is it not possible to reduce billing reconciliation to less than 24 hours for IR billing?	This will be possible post implementation of online charging. We have already initiated this development in phases, based on top IR Tariff destinations.

2. Findings of the Authority:

2.1 Matter heard. After careful perusal of record and applicable regulatory framework, followings are the findings of the Authority:

2.1.1 Under section 4 (1)(a) of the Act one of the functions of the Authority is to regulate the establishment, maintenance, operation of telecommunication system and provision of telecommunication services in Pakistan. In this regard the Authority issued licenses, promulgated regulations and complying with the policies issued under section 8 of the Act and rules framed under section 57 of the Act.

2.1.2 For exercising its powers and performance of its functions, the Authority issue regulation in accordance with section 5 (2) (o) of the Act. In order to promote and protect the rights and interests of consumers of telecommunication services, the Authority promulgated Telecom Consumers Protection Regulation, 2009 (the “Consumers Regulations”). Regulation 8 of the Consumers regulations defines

commercial practices to be followed by the licensee while provisioning the telecommunication services. For ready reference, regulation 8 of the Consumers Regulations is reproduced herein below:

- “8. Commercial Practices:** (1) Operator shall not use unfair commercial practices when selling services to Consumers.
- (2) A Commercial Practices shall be regarded as unfair if:
- (i) It is contrary to the requirement of Professional Diligence;
 - (ii) It is a misleading action under provisions of sub-regulation (3);
 - (iii) It is a misleading omission under provisions of sub-regulation (4);
 - (iv) It is listed in sub-regulation (5);
- (3) A Commercial Practice is a misleading action if:
- (i)
 - a.
 - b. The main characteristics of the Services, such as its availability, validity, benefits, risks.....
- (4) A Commercial Practice is misleading omission if, in its factual context taking account of all its features and circumstances and the limitation of the communication between, it omits, hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information that the average Consumer needs, according to the context, to take and inform Transactional Decision and thereby causes or likely to cause the average Consumer to take a Transactional Decision that he would not have taken otherwise”

2.1.3 The terms Commercial Practice, Professional Diligence and Transactional Decision have been provided in the Consumers Regulations in the following terms:

“Commercial Practice” means an agreement or set of rules, which defines the behavior of Operators who undertake to be bound by it in relation to one or more Commercial Practices.

“Professional Diligence” means the standard of special skill, care and conduct with an operator may reasonably be expected to exercise towards Consumers commensurate with honest market practice or the general principle of good faith.

“Transactional Decision” means any decision taken by a Consumer whether it is to act or to refrain from acting concerning:

- a. whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of the Services; and
- b. whether, how and on what terms to exercise a contractual right in relation to a Service.

2.1.4 For the purpose of record, it is relevant to mention here that while adjudicating upon the complaint on the issue of IR charges over and over the security deposit, the licensee had already been directed vide order dated 18th August, 2023 as under:

- i. *The complainant is not under any obligation to pay bill against usage of service on the account of data on International Roaming over and above the credit limit i.e. Rs. 15000/-.*
- ii. *PTML (Ufone) is directed not to suspend or terminate the telecommunication services with regard to instant matter. The services of the complainant shall not be suspended or terminated in this regard.*
- iii. *PTML (Ufone) is also required to provide / share comprehensive procedure as already been directed through the "Decision of the Authority passed in the Appeal filed by Creative Electronics (Pvt.) Limited" dated 16th November 2017 as soon as possible.*

2.1.5 As matter of record, with regard to issue of the billing charges on account of IR, it is relevant to point out that the Authority, through its order dated 17th November, 2017 (in Creative Electronics case) has already directed the licensee to lay down a comprehensive procedure/ check and balance to track the extra usage as well as excessive credit limits, especially IR services where IR charges are comparatively high and not affordable by the consumers. Therefore, at this belated stage, and as a result of non-compliance of the said order of the Authority, the licensee's contentions of technical constraint or inability for reconciliation is not justifiable on the premise that the licensee vide letter dated 15th April, 2024 has pointed out that they do not have any online/ realtime charging mechanism.

2.1.6 While examining the information provided by the licensee through letter dated 15th April, 2024, it has also been observed that as per the online charging implementation, subscriber services are stopped after the complete security deposit consumption. Moreover, the licensee also stated that such IR charges issue will be resolved after implementation of online/realtime charging solution. The licensee also highlighted that the technical solution has been finalized and commercial roll out will hopefully be completed within the next few month covering 90 % of the international roaming destinations. The aforesaid reply leads to the conclusion that the licensee has not complied with the earlier order dated 17th November, 2017 within the time lines as provided therein even after lapsed more than six years. The steps, measures and plans undertaken by the licensee at this stage as intimated above for implementation of online/ realtime charges to rectify the issue of higher IR charges exceeding security deposite, could have been taken and implemented in 2017 in compliance of the order dated 17th November, 2017.

2.1.7 Considering the above referred, the Authority is of the view that due failure on the part of licensee in implementing the earlier decision of the Authority on the issue of IR, the complainant can not be held liable to pay an excessive billing amount on accout of IR charges. Since the complaiant has already deposited security amount against his number, therefore, upon exceeding the limit of usage of mobile services, the licneseee has a right to deduct charges from security deposited and discontinued services in accordance with terms and condition and applicable regulations. In the instant matter, the licensee has already secured the security deposit of Rs.15,000/- against mobile services, therefore, the compainant is not responsible or liable for any charges over and above security deposited.

3. Order:

3.1 Keeping in view the above-mentioned facts and relying upon the available record, the licensee i.e. Pakistan Telecom Mobile Limited is hereby directed to implement the decision dated

18th August, 2023 forthwith and submit a compliance report within three working days from the date of receipt of this order.

3.2 The licensee is further directed to provide timelines and steps being taken for implementing the online real-time charging mechanism within three working days from the date of receipt of this order.

3.3 Meanwhile, to prevent future occurrences in countries where this system is not yet applicable, the IR activation procedure should be temporarily modified.

3.4 In case of failure to comply with paras above, further legal proceeding will be initiated against the licensee as per applicable law.

Maj. Gen. Hafiz UR Rehman (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 7th day of June, 2024 and comprises of (08) pages only.