



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

File No: PTA/Enforcement Wireless/Mobile QoS/Quarterly QoS Survey/18/2020/494

Show Cause Notice: 7<sup>th</sup> July, 2020  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 2<sup>nd</sup> December, 2020

**Panel of Hearing:**

Maj. Gen. Amir Azeem Bajwa (R): Chairman  
Dr. Khawar Siddique Khokhar: Member (Compliance & Enforcement)  
Muhammad Naveed: Member (Finance)

**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 Pakistan Mobile Communications Limited "PMCL" (the "licensee") is a public Limited Company incorporated under the Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Pakistan pursuant to the non-exclusive license No. MCT- 05/WLL&M/PTA/2007 dated 06<sup>th</sup> July 2007, license No. NGMS-04/WLL&M/PTA/2014 dated 21<sup>st</sup> May 2014 and license No. NGMS-06/WLL&M/PTA/2017 dated 29<sup>th</sup> June 2017 (the "license") issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate telecommunication system and to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license.

1.2 As a licensee of the Authority, 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 Networks Quality of Service Regulations, 2011 (the "QoS Regulations") and the terms and conditions of the license.

1.3 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 condition 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.

1.4 As per 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 and clause (f) of section 6 of the Act provides that the Authority shall ensure that the interest of users of telecommunication services are duly safeguarded and protected.

1.5 Every license granted by the Authority under the Act, including the licensee, contains clause (g) of sub-section (4) of section 21 of the Act regarding obligations to provide telecommunication service to particular persons or areas to meet minimum standards for quality and grade of services requirements.

1.6 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.

1.7 The clause 6.5.1 of the license obliged the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 and such other quality of service standards as the Authority may by regulation, require.

1.8 Vide Appendix 3 of the license prescribed the quality of service standards in detail manner and requires the licensee to take all reasonable and prudent measure to ensure that its Telecommunication System and Licensed Services are available and operate properly at all times and during each calendar month it shall meet or exceed the quality of services standards mentioned in clause 1.3 of Appendix-3 of the license.

1.9 The Authority as to ensure that users of telecommunication services get such QoS standard as laid down in the license, conducted a joint survey with licensee in the 1<sup>st</sup> quarter of 2020 at Sheikhpura, Gujjar Khan and Mansehra.

1.10 Due to non-provision of the licensed services and non-maintaining the required standards of quality of service amounts to serious violations and contravention of the prevailing regulatory laws, directions of the Authority. As consequence thereof, a Show Cause Notice (SCN) under section 23 of the Act on 7<sup>th</sup> July, 2020 was issued whereby the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service at par with clause 1.3 of the license and the QoS Regulations within fifteen (15) days of the issuance of this Show Cause Notice, as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the licensee under the Act.

2. The licensee replied to the SCN vide letter dated 5<sup>th</sup> August, 2020 and denied allegations as mentioned in the SCN. Relevant contentions of the licensee as made in the SCN are as under:

“2.1 The SCN suffers from a substantive error of law of multifariousness, and prejudices the Licensee in its defense.

2.2 Each license has distinct QoS parameters, service and roll-out obligations. The QoS obligations under each license have to be dealt with separately; the obligations under one license cannot be carried over to the other licenses. The licenses are not interchangeable instruments.

2.3 Aspects of instruments which were overlooked by PTA in issuing SCN, as shown in the list (non-exhaustive) below:

<b>Legal Provision</b>	<b>Violation</b>
<b>Cellular Mobile Network Quality of Service (QoS) Regulations, 2011 (the QoS Regulations)</b>	
8(7)	1. 30 days along with inspection report not given to take remedial measures and submit compliance report; instead the SCN issued prematurely, by passing regulation 8(7)  2. 15 days given to remedy instead of 30 days
8(6) and 8(8) Annexes A & B	3. urban/rural disaggregation of survey results adopted, which is not warranted by the Annexes  4. survey methodology in Annex-A not followed, in particular, the coverage area ignored by making test calls beyond the claimed coverage area.  5. results not tabulated in accordance with Annex-B  6. distinction not drawn between Tier-1, Tier-2 and Tier-3 cities for survey methodology, with the urban/rural distinction not applicable thereto
9(2)(e)	7. not sought the comments of the Licensee before publishing the results
<b>PTA (Functions &amp; powers) Regulations, 2006 (the F&amp;P Regulations)</b>	
10(3)	8. The inspection report not shared with the Licensee and 30 day timeframe not given to take remedial measures and submit compliance report; instead the SCN issued prematurely, bypassing regulation 10(3)
<b>The Pakistan Telecommunication Rules, 2000 (the Rules)</b>	
8.2(c) Appendix B	9. failed to apply the exception to liability where “...compliance is prevented or substantially hindered by any act of Nature...” and in “circumstances beyond the control of the License”, in demanding absolute coverage on each and every inch of the coverage areas and/or where coverage was affected by natural and physical causes
<b>The licenses</b>	

	<i>10. misinterpreted to mean that regulations, directions and decisions of the Authority are binding even if ultra vires or in violation of the applicable legal and license framework</i>
<i>Appendix III</i>	<i>11. limited-area survey for enforcement of QoS is not stipulated in Appendix III and is therefore invalid</i>
<i>The Pakistan Telecommunication (Re-organization) Act, 1996 ( the Act)</i>	
<i>Section 6, 21,22</i>	<p><i>12. 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 QoS 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 QoS Regulations, the Rules, and to results of a survey that is materially non-compliant with the licenses and the regulatory framework</i></p> <p><i>13. audi-alteram-partem causing prejudice to the Licensee; the Authority's proposed methodology vide 14.2.2020 applied without ruling on the industry's application/representation thereon vide 20.2.2020.</i></p>

2.4 *The SCN is based on a QoS Survey that measures the QoS KPIs in a survey of a few days and a few hundred calls only, while the QoS measurements, for the purposes of enforcement of the QoS as licensed obligations, are to be taken on a full-month-basis per Appendix III of each license. This condition of calendar month measurement is recognized by the Authority itself in paragraph 9 of the SCN.*

2.5 *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 concomitant QoS 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 QoS against threats of penalties, only such surveys can form the basis of enforcement which are fully compliant with Appendix III, 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.*

2.6 *The SCN applies a "city-urban-rural" divide for the KPI measurements, when this distinction is alien to each license and the delegated legislation administered by the Authority. The urban-rural disaggregation of QoS data imposes higher QoS obligations than those set out in the licenses. The city-urban-rural divide distinction reduces the sample size for KPI measurements, whereby even a few unsuccessful calls can cause the results to fall below the licensed QoS depicting a wholly unrealistic and distorted result based on a*

*miniscule part of the network, and is therefore highly prejudicial to the Licensee and contrary to the express stipulations in the licenses.*

- 2.7 *The SCN applies the QoS-KPIs on a very narrow area basis (drive test route), whereas each license contemplates the measurements, for the purposes of QoS enforcement, on a system-wise basis. When viewed on a system wise-basis, the Licensee is fully compliant with its licensed QoS. 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, than are stipulated in Appendix III to the licenses. To hold otherwise would mean that a drive test in a single remote village would be determinant of the QoS compliance, ignoring the cumulative effect of the millions of calls and data packets in the entire region. Such an interpretation, if taken, would be against the provisions of the licenses and is not warranted by the Act or any intra vires delegated legislation thereunder.*
- 2.8 *The SCN ignores the qualification set out in the very first paragraph of Appendix III of the licenses for the "prudence and reasonableness" test in the application of the KPIs, despite acknowledging this test in para 9 of the SCN. The prudence and reasonableness test links to the expression "cost-effective" in section 4(d) of the Act. The prudence and reasonableness test negates a strict liability' obligation, does not dictate inflexible standards, methods or acts to the exclusion of all others, but admits of a spectrum of possible practices, methods and acts which could be expected to accomplish the desired result at a prudent and reasonable cost. That is to say, the KPIs are not an absolute obligation, but their application is subject to the aforesaid test. It is common knowledge that all cellular networks have pockets of low coverage, and it is disproportionately expensive, and therefore imprudent and unreasonable, to ensure KPIs on each and every inch of the covered area.*
- 2.9 *This limitation is recognized in Appendix III of the licenses. It is a right of a licensee that technical constraints on and the limitations of cellular networks be recognized and a licensee not be expected to operate above and beyond such constraints. In demanding absolute coverage beyond the coverage areas, or where coverage is adversely affected by physical causes such as shadowing effect, hilly terrain, etc., the SCN fails to extend the exception to liability stipulated under clause 8.2(c) of Appendix B to the Rules.*
- 2.10 *That the obligation to meet and exceed the quality of service standards is conditioned by and premised on a timeframe of each calendar month, that is, the survey is to be based on readings taken over an entire month and not a lesser period (in some cases as short as 1 day), and that the test of prudence and reasonableness applies in judging the Licensee's compliance with the QoS KPIs. The survey results accompanying the SCN do not meet the condition of an entire-month measurement and make no allowance for the prudence and reasonable test per Appendix III to the licenses, are therefore invalid, and resultantly the SCN is also invalid and must therefore be discharged.*
- 2.11 *The survey results are invalid for the reasons set out in this reply, including, without limitation, for being based on the urban/rural distinction, confined to*

*less than a month's readings, based on calls in many instances in out-of-coverage areas, applying criteria not envisaged in the licenses, based on an insufficient sample of calls, in disregard of the other conditions of the licenses including the prudence and reasonableness test and for patent violations of the Rules and the Regulations administered by the Authority. Without prejudice to the foregoing, the Licensee's own tests did not return many alleged shortfalls on re-test by the Licensee. When the results are recomputed by excluding the faulty logs from the survey results, the results reveal QoS compliance by the Licensee.*

- 2.12 *The survey results demonstrate (despite not following the due process and apparent objective to highlight as many shortfalls as possible by resorting to unwarranted urban/rural disaggregation of data, non-coverage area calls, insufficient sample size, and others) that the Licensee is compliant with the QoS on an overwhelming number of counts. The alleged shortfalls identified are miniscule in comparison with the overall results of the entire KPIs taken as a whole. The doctrine of substantial compliance applies to the survey results and the Licensee cannot be penalized on the basis of marginal variations on some only of the KPIs, especially where such KPIs are not measured and compiled in accordance with the terms of the licenses and the applicable regulatory framework.*
- 2.13 *The reference to violations of the "directions of the Authority" is an error patent on the face of the record, as neither the SCN identifies any direction, nor any earlier directions exist, issued to the Licensee in relation to the QoS for the areas the subject of the SCN which allegedly stand violated by the Licensee. Rather, the Authority failed to give a direction with 30 days remedy timeframe and/or calling for Licensee's comments making the SCN premature per the applicable Regulations.*
- 2.14 *It is not clear why the Authority took more than 3 months to require the Licensee to address the shortfalls alleged in the surveys. The surveys were conducted in February and March 2020. Per the Authority's established practice, consistent with the Regulations, the Authority would have sent forthwith the inspection report to the Licensee with a 30-day compliance direction. In the instant case, the Authority remained inactive for over 3 months, and then suddenly turned around and issued this harsh SCN. The Authority did not even invite the Licensee's comments on the reasons for the alleged shortfalls as required per QoS Regulation 9(2)(e), and went ahead to publish the results. If the Authority had followed its own Regulations, practice and procedure, it would have heard from the Licensee some genuine explanations, but the Authority chose to pre-judge the matter by issuing the SCN instead. There is no rational explanation for such conduct that fails the Wednesbury rationality test for actions by statutory functionaries.*
- 2.15 *The licensee reserves its rights to challenge before a Constitutional Court the vires of the Rules and the Regulations to the extent they purport to impose different or more onerous QoS obligations than those set out in the licenses.*
- 2.16 *The SCN is therefore in patent violation of a combined reading of regulations 8(7) and 9(2)(c) of the QoS Regulations and regulation 10(3) of the F&P*

*Regulations, whereby the Licensee is to be given the inspection report with 30 days for remedy followed by a compliance report. It is only after the compliance report or non-satisfactory explanation is submitted and the Authority finds continuing non-compliance severe enough to merit coercive action that a show-cause notice is to be issued."*

### **3. HEARING BEFORE THE AUTHORITY:**

3.1 In order to proceed further the instant matter was fixed for hearing on 2<sup>nd</sup> December, 2020 before the Authority. Mr. Sardar Ejaz Ishaq Khan, Advocate Supreme Court of Pakistan, Mr. MNA Rehan, Advocate, Mr. Hamid Mazhar, Advocate, Ms. Fariha Khan, Manager Litigation, Zulfiqar Ali, Manager Regulatory and Syed Fakhar Ahmed, Chief Corporate and Regulatory Affairs attended the hearing on the behalf of the licensee. The learned counsels of the licensee reiterated that same as submitted in reply to the SCN.

### **4 FINDINGS OF THE AUTHORITY:**

4.1 Matter heard and record perused. After careful examination of record and arguments advanced by the legal counsel as well as written reply of SCN filed by the licensee the Authority reaches at the following findings:

4.2 Admittedly, there is no dispute with regard to provision of telecommunication services in accordance with licensee terms and condition. The licensee is under obligation to meet all requirements of QoS as provided in the license. By virtue of provision of the Act, the Authority in accordance with section clause (f) of section 6 of the Act provides that the Authority shall ensure that the interest of users of telecommunication services are duly safeguarded and protected. In this regard it is the responsibility of the Authority to ensure the licensee are meeting the requirements of QoS.

4.3 In accordance with 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 license is under obligation to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority. By virtue of 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.

4.4 The license granted by the Authority under the Act contains clause (g) of sub-section (4) of section 21 of the Act regarding obligations to provide telecommunication service to particular persons or areas to meet minimum standards for quality and grade of services requirements.

4.5 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 read with section 21 of the Act, grants licenses for telecommunication system and services. 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 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.

4.6 Section 21(4)(g) of the Act provides that the licensee is under obligation to provide telecommunication services to particular person 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, 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

4.7 It is pertinent to mention here that QoS regulations does not define any sample size for any particular city. The main aspect of Annex-A is Voice Calls, SMS, Percentage of ON-Net, Off-Net Calls/SMS, B-Party (terminating number) moving, Call Window including pause between Calls. Conduct of survey within the coverage boundaries and the same has been followed.

4.8 The licensee stressed that SCN amounts to passing of an enforcement order within the meaning of Rule 9 of the telecom Rules as the rule 9 of the telecom Rules explicate the steps that need to be taken prior to the issuance of an enforcement order. In this regard, it is relevant to mention here that SCN has been issued as per Section 23 of the Act and it is well settled that the in case of any conflict or inconsistency between the provision of the rules and Act, the latter shall prevail.

## **5. ORDER**

5.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority has reached to the conclusion that the licensee i.e. PMCL, the license has failed to meet the requirement of KPIs as provided in the license. As a consequence of non-observing KPIs for Quality of Services, consumers are suffering with low grade telecommunication services. It is the responsibility of the licensee to ensure provision of licensed services should be in accordance with parameters as laid down in the license conditions, applicable regulations, Standing Operating Procedure and directions issued by the Authority from time to time. Having gone through the survey report and perusal of record, it is found that despite providing opportunity to remedy the contravention within certain time the licensee has failed to remedy the contravention with regard to remedy the contraventions for maintaining the quality of licensed services in the manner as provided in the license.

5.2 Considering the nature of contravention and violation on the part of licensee, a fine to the tune of Rs. 300,000/- (Rupees Three hundred thousand only) is hereby imposed with

Dated: 29<sup>th</sup> June, 2021

the direction to pay the same within thirty (30) days from the date of receipt of this order and submit a compliance report.

5.3 In case of failure to comply with the same further legal proceeding as per applicable law will be initiated without any further notice.

**Maj. Gen. Amir Azeem Bajwa (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

**Dr. Khawar Siddique Khokhar**  
Member (Compliance &  
Enforcement)

Signed on 29<sup>th</sup> day of June, 2021 and comprises of (9) pages only.