



PAKISTAN TELECOMMUNICATION AUTHORITY

Headquarters, F-5/1, Islamabad

<http://www.pta.gov.pk>

Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (“Act”) against Pakistan Telecom Mobile Limited (PTML)

No: PTA/CA/CA-DTE/348/2020/15-7/**584**

Date of Show Cause Notice:	15 th March 2021
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	15 th July 2021

Panel of Hearing:

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

Issue:

“Overcharging (Billing Verification)”

DECISION OF THE AUTHORITY

This Enforcement Order seeks to dispose of Show Cause Notice (the “SCN”) dated 15th March 2021 and following proceedings before the Pakistan Telecommunication Authority (the “Authority”) that took place on 15th July 2021.

1. BRIEF FACTS:

- 1.1 Precisely stated Pakistan Telecom Mobile Limited (the “licensee”) was awarded non-exclusive License No.MCT-06/WLL&M/PTA/2014 dated 8th April, 2014 and License No. NGMS-03/WLL&M/PTA/2014 dated 21st May 2014 (the “license”) issued/renewed by the Pakistan Telecommunication Authority (the “Authority”) to provide the licensed services in Pakistan (excluding AJ&K and Northern Areas) to establish, maintain and operate licensed system and to provide licensed cellular mobile services in Pakistan on the terms and conditions contained in the license.
- 1.2 The licensee is obliged to comply with the provisions of the prevailing regulatory laws comprising of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”), Pakistan Telecommunication Rules, 2000 (the “Rules”), Telecommunication Consumers Protection Regulations, 2009 (the “TCP Regulations”) and the terms and conditions of the license.
- 1.3 By the virtue of 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, the

licensee is obligated to comply with the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

- 1.4 In terms of Clause (c) & (m) of Sub-Section (1) of Section 4 of the Act, the Authority is under an obligation to promote and protect the rights and interests of users of the telecommunication services in Pakistan.
- 1.5 As per Clause (f) of Section 6 of the Act, the Authority shall ensure that the interest of users of telecommunication services are duly safeguarded and protected.
- 1.6 As per Sub-Regulation (1) of Regulation 8 of TCP Regulations, the Operators shall not use unfair commercial practices when selling services to consumers. Further, Clause (d) of Sub-Regulation (3) (i) of Regulation 8 of the TCP Regulations provides that a commercial action is misleading if it contains false information, and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average Consumer in relation to the tariff or the manner in which tariff is calculated and the existence of specific tariff advantage.
2. That a survey was carried out by the Authority with regard to billing verification from 23rd to 30th December 2020. Based upon the results of the survey, Call Detail Record (CDR) was obtained from the licensee. The examination of CDR reveals that an additional amount was being charged by the licensee from consumers under its UWon Package made from their network over and above the advertised rates.
 - 2.1 The licensee vide PTA letter No. PTA/CA/319/2017//15-7/2021 dated 22nd February 2021 (along with relevant record) was required to explain reasons for overcharging under UWon package and submit a compliance report to the Authority within five (05) working days. The licensee in its response submitted that it is fully compliant. The response of the licensee was unsatisfactory and contrary to the record provided by the Authority.
 - 2.2 In addition, the Authority was also in receipt of several consumer complaints wherein the allegation of excessive charging on the account of data services have been made despite data settings being switched off. In response to PTA complaint number PTA-U-20201211-2083-23 dated 11th December 2020, the licensee stated that “..... *inherent to 4G/LTE technology, the data connection of 4G/LTE subscriber remains established despite data settings being switched off from the handset. However, a very limited volume of internet is consumed in such cases. So, it is suggested to change network settings to 2G/3G from the handset when using Mobile Data.....*”
 - 2.3 Upon taking notice by the Authority that excessive charging under UWon package has been made by the licensee, and further the consumers were being charged without a valid justification against the data services being switched off from the handset

which tantamount to violation and contravention of the prevailing regulatory laws, therefore, a SCN dated 15th March 2021 was issued to the licensee requiring it to take the remedial measures as under within 15 days:

- 2.3.1 Tendering an apology from all its affected consumers in the print and electronic media in an unambiguous and legible format;
 - 2.3.2 Unconditional refund of excessive amount charged from all such consumers forthwith along with compliance report containing details of consumers vis-à-vis number of SMS against which overcharging has been occurred from April 2019 to date;
 - 2.3.3 Submitting an undertaking that nothing has been concealed and no further discrepancy exists in its billing system; and
 - 2.3.4 A certificate from external auditor to confirm that refund has been made to all affected consumers in the required manner.
- 2.4 In compliance of the aforesaid SCN, the licensee submitted its reply vide letter dated 30th March 2021. The main contentions put forth by the licensee are reproduced herein under:-
- 2.4.1 The licensee submitted that it is a law-abiding entity. It has not engaged in any conducts that may tantamount a violation of the provision of the prevailing regulatory laws comprising of the Pakistan Telecommunication (Re-Organization) Act, 1996 (the Act), the Pakistan Telecommunication Rules, 2000 (the Rules), the Telecommunication Consumers Protection Regulations, 2009 as amended (the Regulations) and any of the license (the License) conditions.
 - 2.4.2 The licensee contended that it is cognizant of the Authority's functions envisaged under Section 4 of the Act and, in particular, Clause (c) and (m) of Sub-Section 1 of Section 4 of the Act wherein the Legislature appears to have intended to protect the legit rights and interests of the users of the telecommunication services.
 - 2.4.3 The licensee asserted that amongst its several general responsibilities provided under Section 6 of the Act, the Authority is obligated to ensure that the interest of the users of telecommunication services are duly safeguarded, and it is submitted that it takes it as its primary mission to provide the best services and protect the legitimate interests of its subscriber on a relentless and continuing basis by all possible measures.
 - 2.4.4 The licensee articulated that as a law-abiding corporate entity, it strictly adheres to the provisions of Clause (a) of Sub-Section 4 of Section 21 of the Act, Clause 8.1 of Appendix B of the Rules, and Condition 3.1 of the License

which in turn obligate it to comply with the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority. In the context of this instant SCN, there is nothing on record to suggest that it has contravened any of the above referred statutory instruments, among other things.

- 2.4.5 The licensee portrayed that it has always complied with the provision of the Telecom Consumers Protection Regulations, 2009 (as amended). Reference Sub-Regulation (1) of Regulation 8 of the Regulation, there is nothing on record to suggest that it has engaged or attempted to engage in false or misleading advertising and promotional practices, including concerning tariff or how the tariff is calculated and the existence of specific tariff advantage. Rather, PTA's record would indicate that it has always informed the Authority before the launch and revocation of all commercial practices, including the change in tariff, and duly notified to its subscribers as prescribed under the Regulations.
- 2.4.6 The licensee further expressed that it is also compliant with Sub-Regulation (ii) of Regulation 10 of the Regulations providing that the operators shall ensure that the consumers know the exact costs of all Services before purchase, clearly expressed without any false or misleading information, explicitly disclosing the tariff rates, unit of charging, applicable taxes in the advertisement. Moreover, it is also compliant with the requirements of Sub-Regulation (iii) of Regulation 10 providing that the operators shall ensure that the effective tariff for all Services shall follow the tariff as published in the Advertisement.
- 2.4.7 The licensee stated that PTA has alleged that it has carried out billing verification of UWon package offered on licensee's network as against the advertised rates from 24th December to 30th December 2020 and based on the Call Detail Records (CDRs) provided by licensee, it has found that some small amount of extra money has been charged to subscribers. In this regard, the licensee submitted that the department's findings are contrary to the fact because the CDRs provided by PTA *vide* letter dated 22nd February 2021 titled "PTA Letter to Ufone Overcharging of Voice Tariff on UWon package" only relates to calls done on 23rd December 2020, which clearly shows that PTA's team has erred in calculating the rates of UWon package for the referred period between 24th December and 30th December 2020, hence the alleged violation is baseless and unfounded.
- 2.4.8 The licensee *vide* its reply contended that it has rightly submitted that it is 'fully compliant' in response to PTA Letter No. PTA/CA/319/2017/507/2021 dated 22nd February 2021 and the Authority is requested to not unnecessarily

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label it as a contravention and make an unfounded case against it as payment/charging component on our system is based on highly sophisticated technology and it cannot vary from consumer to consumer or charge without any usage of voice/data service. In this regard, the licensee summarized calls and charges as under:

Package	Calls	Pulse	Chargeable	Charged	Difference
Super Sasta Package- 50 FAT*	18	37.00	56.67	56.67	0.00
UWon	21	42.00	122.93	122.93	0.00
Total	39	79.00	179.60	179.60	0.00

2.4.9 With regard to conducting survey, methodology and reporting, the licensee raised objections as under:

- Format was not standardized;
- It appears that the department has surveyed from 24th December to 30th December 2020, however, it has consistently alleged an anomaly in the CDRs of 23rd December 2020, which in turn is unfounded; and
- Against the principle of fair procedure and natural justice, the department has not provided opportunity to explain the response/call-by-call analysis submitted by the licensee.

2.4.10 In respect of record provided by PTA, the licensee made observations as below:

- At the time of the survey, the reporting format was not defined.
- The department only considered Voice, data, and SMS using CDRs.
- The department did not consider account balance inquiry/package change and other VAS service usages during the survey and evaluation of licensee's analysis shared with PTA in subsequent stage.
- The department did not consider the data usage CDRs generated and balance depletion, as the balance may be depleted, but the CDRs will be generated at the end of a session for consolidated usage.
- In the methodology used by the department, the derived balance of PTA appears to be different than the actual balance available in the system.
- Considering the above observations, a detailed analysis for CDRs dated 23rd December 2020 from 11:06 AM to 11:19 AM was shared with the department as evidence of compliance and no tariff related discrepancy was identified in PTML's billing.

2.4.11 Pertaining to charging of data despite mobile data being switched off, the licensee enunciated as below:

- PTA has referred to a complaint dated 11th December 2020; whereas the

survey was conducted from 24th December to 30th December 2020. The licensee's standard response on such complaint is also readily available at its website since the introduction of the 4G/LTE services and all average consumers, especially those users of 4G/LTE technology ought to know it beforehand.

- ii. Indeed, the matter is related to turning data (2G, 3G, 4G bandwidths) On or Off on the mobile handset(s) and/or mobile data device(s). It is well-known that while activating and deactivating inherent to LTE/4G technology, a certain amount of data is consumed depending on the phone's features, rights and privileges given to applications on handset and network switching by consumers, whether manual or automatic modes. As referred to above, PTML has made full, clear, and conspicuous disclosure to its consumers using varying bandwidths.
 - iii. It is observed that PTA has entertained and lodged such complaints under the work code "Billing Related Issues" in PTA's CMS from 10 February 2019 to 20 March 2021 and were marked as "Resolved" by PTA accepting the licensee's stance with respect to inherent consumption of a small amount of data when customers' handsets switched from 3G to 4G bandwidths.
3. With the aforesaid background of the case, the hearing was convened in PTA HQ's, Islamabad, on 15th July 2021. The licensee was represented by Mr. Fawad Niazi (Sr. M. Reg. Strategy), Mr. Mazhar Chatta (Manager Revenue Assurance), Arshad Javed (Manager Legal), Maryam Ali Abbasi (Advocate High Court), Mr. Muhammad Ali Raza (Advocate Supreme Court), and Mr. Naveed K. Butt (GCRO). During the hearing, the licensee reiterated the submissions already made through its written reply to the SCN. In furtherance to its submissions and during the hearing, the licensee was directed to submit certificate from vender regarding establishment of data session despite mobile data settings being switched off in LTE technology and applicable practice worldwide.

4. **FINDINGS OF THE AUTHORITY:**

Matter heard and record perused. After careful examination of record, arguments and written reply of SCN filed by the licensee, the Authority reaches at the following findings:

- 4.1 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 read with Section 21 of the Act, grant licensee for Telecommunication system and services. In addition, under Clause (c) & (m) of Sub-Section (1) of Section 4 of the Act, the Authority is under obligation to promote and protect the rights and interest of users of telecommunication services. Furthermore, pursuant Clause (f) of Section 6 of the Act, the Authority shall ensure

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that the users of telecommunication services are duly safeguarded and protected and is also required to promote and maintain competition in telecommunication sector. Moreover, in accordance with Clause (m) of Section 4 of the Act, the Authority shall regulate competition in telecommunication sector.

- 4.2 Vide Sub-Regulation (1) of Regulation 8 of TCP, the operator shall not use unfair practices when selling services to consumers. Further, Clause (ii) of Regulation 10 of the TCP makes it obligatory upon the licensee to ensure that consumers know the exact costs of all services prior to purchase, clearly expressed without any false or misleading information, explicitly disclosing the tariff rates, unit of charging, applicable taxes etc.
- 4.3 In order to ensure that users of telecommunication services are charged as per applicable rates, a survey was carried out from 23rd to 30th December 2020. After analyzing the CDR obtained from the licensee, it was revealed that an additional amount was being charged from consumers under its UWon Package made from their network on all Packages over and above the advertised rates. Furthermore, the licensee in its reply dated 30th March 2021 has admitted that while activating and deactivating internet to LTE/4G Technology a certain amount of data is consumed depending on the phone's features, right and privilege given to the applications on handset and network switching by consumer, whether manual or automatic mode excessive charging on the account of data services have been made despite data settings being switched off. The consumption of certain amount of data is applicable on all packages including UWon package.
- 4.4 Due to charging additional amount from consumers under UWon Package and excessive charging on the account of data services despite data settings being switched off, a SCN was issued to the licensee for taking remedial measures.
- 4.5 The submission of the licensee that it is compliant in respect of charging amount from consumers on UWon Package is incorrect, invalid and unjustified on the basis of CDR provided by the licensee which reveals an overcharging of Rs. 1.61 on UWon Package. In this regard, it is relevant to mention here that as per analysis of the CDR provided by the licensee, the ending balance of call duration of 55 Seconds was Rs. 116.88 and the beginning balance of call duration of 58 Seconds was Rs. 115.03 which shows difference of Rs. 1.85. After deduction of balance verification charges of Rs. 0.24, an overcharging of Rs. 1.61 has been observed without any justification. Furthermore, ending balance of call duration of 58 Second was Rs. 111.96 and beginning balance of call duration of 114 Seconds was Rs. 110.11 which shows difference of Rs. 1.85. After deduction of balance verification charges of Rs. 0.24, an overcharging of Rs 1.61 has been observed in the CDR. This overcharging is attributed to activation of internet session by Ufone on all packages of consumers despite data setting being switched off.

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- 4.6 Regarding excessive charging on the account of data services despite Mobile data settings being switched off, the licensee's contentions that inherent to 4G/LTE technology, the data connection of 4G/LTE subscriber remains established despite data settings being switched off from the handset, is concocted and whimsical. In this regard, it is pertinent to mention here that such issue has never been faced by the subscribers of the other cellular Mobile operators. Furthermore, during the hearing and vide email dated 3rd August 2021, the licensee was directed to submit certificate from vender regarding establishment of data session despite mobile data settings being switched off in LTE technology and applicable practice worldwide. In response thereof, the licensee vide an email dated 4th August 2021 has submitted vender statement thereby claiming that other cellular operators in Pakistan are also charging data while mobile handsets are restarted. However, contrary to the claim of the licensee, no such instances against other cellular mobile operators were observed during billing verification exercise.

5. ORDER:

- 5.1 In light of the above, it is an admitted position that the licensee is persistently at fault in terms of excessive charging on account of data services despite Mobile data settings being switched off on all its packages, therefore, the Authority on very compassionate grounds directs the licensee as under:
- (a) Tender an apology to all its affected consumers in the print and electronic media in an unambiguous and legible format;
 - (b) Unconditional refund of excessive amount charged from all such consumers irrespective of packages subscribers forthwith along with compliance report containing details of consumers *from the date of launch of LTE*;
 - (c) Submitting an undertaking that nothing has been concealed and no further discrepancy exists in its billing system; and
 - (d) A certificate from external auditor to confirm that refund has been made to all affected consumers in the required manner.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 12th day of October, 2021 and comprises of (08) pages only.