

# Dispute Resolution in the Telecom Sector

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# TELECOM SECTOR – Present Scenario

The present-day telecom sector is characterized by:

- 765 Million wireless Telecom Subscribers.
- Overall Teledensity of around 64% out of which Rural Teledensity 24.29% as compared to Teledensity 0.6% in year 1991.
- Second Largest Telephone Network in the World next to China
- One of the LOWEST Tariffs in the World due to Tough Competition among Service Providers.
- Simultaneous existence of state and private owned multiple operators
- Fast changing technologies, convergence of ideas, services markets
- Liberalized and customer oriented regulatory regimes.
- Subscribers wanting Value Added Services using IP, wireless and broadband technologies rather than Plain Old Telephony Service(POTS)
- Countries wanting to attract private investment by providing favourable investment climate.

# DISPUTE RESOLUTION – why so important ?

## ➤ INVESTORS

- ✓ Telecom sector needs huge capital investments.
- ✓ Investors need assurance about quick, fair and effective disputes resolution mechanism.

## ➤ SUBSCRIBERS

- ✓ Need new services at lower tariffs
- ✓ Delays in dispute resolution would deny them this benefit.

## ➤ ECONOMY

- ✓ Slower growth of telecom sector would retard general economic and technical development of the country.
- ✓ In order to avoid disruptions and delays in the development of telecom markets, disputes need to be resolved expeditiously.

# DISPUTE RESOLUTION – Importance

## Successful dispute resolution:

- ✓ facilitates investment climate, stimulates growth and is of prime importance to developing countries targeting higher teledensities and even spread of telecom across all the regions.
- ✓ is increasingly important for introducing competition
- ✓ should be as speedy as the networks and technologies they serve.

Official dispute resolution mechanisms are important as a basic guarantee that sector policy will be implemented.

TDSAT has been settling Disputes quite fast.

Number of TDSAT Judgements have been in public Interest which has led to competition and reduced tariff

# INTERNATIONAL SCENARIO - USA



**FCC IS THE REGULATOR** - interprets, co-ordinates and adjudicates on policy issues and disputes arising from them.

- **FCC provides parties with a choice of ADR procedures as mandated under the Telecommunications Act of 1996.**
- **No separate appellate mechanism for telecom.**
- **FCC generally takes pro-consumer, anti-monopolistic stance in regulatory and dispute resolution functions.**
- **There is a provision of final decision to be given by a commissioner or panel of commissioners. It also admits review petitions.**
- **The decisions can be appealed in US Court of Appeal.**
- **Many of FCC orders are subject to review in Federal Courts.**
- **Unless “arbitrary and capricious” the courts generally don’t interfere in regulatory decisions.**



India has perhaps a unique model since year 2000

- Regulatory functions are vested with the telecom regulator Telecom Regulatory Authority of India (TRAI),
- Policy and licensing functions are retained by the Union Government's wing Department of Telecommunications (DoT),
- Adjudication function has been vested with a specialized high powered tribunal Telecom Disputes Settlement & Appellate Tribunal (TDSAT). TDSAT in India is the ONLY Tribunal of its kind in the World.

# EVOLVING INDIAN TELECOM SCENARIO



- Competition, deregulation and the technological revolution has continued to change the way the telecommunication sector functions.
- As a study commissioned by ITU and the World Bank states: “Old business models and commercial arrangements are being abandoned or bypassed while new ones emerge.”
- Quality of Service has gained massive appeal



# Customer satisfaction and MNP



- The advent of mobile number portability marks the beginning of a new era of customer satisfaction
- MNP, again validates the fact that 'Customer is the King', as today they have the freedom or flexibility to retain their mobile numbers, while moving from one service provider to another
- MNP gives the freedom to the subscriber to choose a service provider based on their service offering without changing their number





- The freedom of movement is not influenced by the inconveniences and costs that come with changing their mobile numbers.
- MNP will enable a subscriber to exercise his or her choice and get products and services in accordance with his or her preferences.
- It is expected that this service will go a long way in enhancing customer satisfaction.
- MNP makes it imperative for service providers to improve their Quality of Service for long term sustenance.

# Customer grievance and UCC Regulations



- Service Providers have always held the view that privacy of the customers is of paramount importance and should be protected.
- To ensure the same Telecom Unsolicited Commercial Communications Regulations, have been put in place to devise a mechanism for curbing the unwanted telemarketing calls.
- National Do Not Call Registry (NDNC registry) has been established by NIC



- Service providers have played an active role in establishment of this registry.
- Any subscriber, who does not wish to receive UCC, can register their phone number through their telecom service provider for inclusion in the NDNC through SMS/Website/Call Centre.
- Operators have made large investments to put in place systems & processes to ensure that the privacy of the subscriber is protected through NDNC Registry.

- **Service Providers have created awareness regarding the mechanism for registration to NDNC through Monthly bills and websites.**
- **As a customer friendly approach, the Service Providers have proposed to provision a common number across all Service Areas for both Basic & Mobile Operations for registration to NDNC Registry through SMS as well as Customer Call Centers.**
- **The date of implementation of operation of the ‘Telecom Commercial Communication Customer Preference Regulations, is from 21st March, 2011.**

# TDSAT – a one stop Solution



- By TRAI Act, which is a special Act, Jurisdiction of civil courts has been ousted and for all telecom, cable and broadcasting sector related disputes, the jurisdiction has been vested only with TDSAT.
- High courts entertain telecom disputes if TDSAT is not sitting.
- HC has limited jurisdiction under Art 226 of constitution to correct gross errors of jurisdiction.
- TDSAT has the following powers i.e. to
  - (a) adjudicate any dispute –
    - (i) between a licensor and a licensee;
    - (ii) between two or more service providers;
    - (iii) between a service provider and a group of consumers
  - (b) hear and dispose of appeal against any direction, decision or order of the Telecom Regulatory Authority of India.



- TDSAT does not hear individual consumer complaints. Consumer Group can however approach TDSAT.
  
- SUPREME COURT-
  - WLL Case- TDSAT powers are not limited to judicial review. It is creature of statute-an expert body created to determine correctness of an order passed by another expert body.
  - TTML case – Not only Licensees but LoI holders also can approach TDSAT.

# TDSAT - Its Different !

- It has wide original and appellate jurisdiction.
- As the only telecom adjudicator, it hears questions of facts and law.
- It blends law, commerce and technology.

Chairperson - serving or retired judge of Supreme Court or Chief Justice of a High Court.

Two members - well versed with technology, telecommunication, industry, commerce or administration or Secretary to Union of India for 2 years minimum.

- It can regulate its own procedures.
- Appeal lies only to the highest court i.e., Supreme Court of India.

# TDSAT - overcomes disadvantages of Regulatory Adjudication

- It has gathered required expertise.
- Very few matters are pending.
- It passed orders on interconnection issues, license agreement interpretation, pricing, jurisdictional issues, policy interpretation, level playing field.
- Even complex matters like challenge to limited mobility service reached finality in less than 3 years, despite appeal to Supreme court.
- Recent decision not to grant adjournments in old matters will help a lot.



# Alternate Dispute Resolution (ADR) in India



- Arbitration Act is an earlier legislation.
- TRAI Act which is a later and special Act excludes only Statutory Arbitration under Sec 7 B of Indian Telegraph Act.
- Licence agreements now provide for dispute resolution through TDSAT.



# TDSAT on ADR



Aircel Digilink Vs UOI and Star TV Vs Asianet decided in Jan 05:-

‘TDSAT will have jurisdiction in respect of any dispute as mentioned in Section 14 of the Act. It will also have the jurisdiction if dispute arises in respect of direct activities in telecom sector i.e. those relating to the telecom services.

Those disputes over which TDSAT has no exclusive jurisdiction and where the third party’s interest like the consumers is not in issue or where there does not exist any public interest, the domestic forums chosen by the parties by way of an Arbitration Agreement may be held to be valid.

We must, therefore, hold that arbitration is barred in respect of the matters which are within the exclusive jurisdiction of the TDSAT under the provisions of Telecom Regulatory Authority of India Act, 1997.



➤ In BSNL vs TRAI - RIO matter decided on 27th April 05 –TDSAT observed that :-

‘...TRAI observation that operators appoint jointly an auditor to decide billing disputes (instead of BSNL Chairman deciding it) is fine but if they fail to appoint such person, reference to TDSAT needs to be made.’

# Important SC Judgments



## BPL vs TRAI – 28th March 2006

The Supreme Court held that where ever TRAI issues any Directive which are directory in nature and not advisory, TRAI will be free to take action under Section 29 read with Section 34 of the TRAI Act in case there is non compliance by service providers of the same.

## Hotel Association case

SC held that Hotel who provide television services to their guests have privity of contract with broadcasters and are thus, "consumers". It is not correct to say that commercial cable subscribers will be outside the purview of regulatory jurisdiction of TRAI.



# Thank You