

In a SDCA, there can be multiple exchanges and a Central Exchange which routes calls from one exchange to another exchange within the SDCA is known as "Tandem". Normally the Tandem is located at the Centre of the SDCA which is generally the Headquarters of the Tehsil and this is known as "Short Distance Charging Centre (SDCC). A call between one SDCA and another SDCA is known as a long distance call and the charging is based on the distance between two SDCCs within a LDCA. For transiting a call from one SDCA to another SDCA either within the same LDCA or from one LDCA to another LDCA, there is requirement of an exchange which is known as "Trunk Automatic Exchange (TAX). In each LDCA, one TAX is designated as "Long Distance Centre Tax (LDCC – TAX). This is also referred to as Level-II TAX. The expression POI means the Point of Interconnection between two networks.

BSNL and HFCL are Basic Service Operators (BSO) providing services in what is known as Punjab Circle. By the impugned communication dated 4/12/2003 TRAI had given certain directions to BSNL acting on the complaint of HFCL Infotel Limited (Respondent No.2) alleging blockage of traffic of HFCL by BSNL in Punjab Circle. Relevant extracts of the above communication of TRAI are given below:-

"HFCL Infotel Limited vide their letter No.HITL-Reg/2003-04/210 dated 02.12.2003 has complained about the blockage of traffic at Level II TAX POIs based on an interpretation of TRAI directive dated 15.6.2000 issued in BSNL vs. Bharti Telenet dispute.It should be appreciated that the blocking of traffic of any operator is against the interest of the consumers of both interconnecting networks. Till these issues are resolved, BSNL is directed under section 13 read along with Section 11 (1)(b)(iii) and (v) of the TRAI Act 2000 to restore the above stated TAX POIs of HFCL Infotel in Punjab. In all other similar cases pertaining to private basic service licensees, BSNL is further directed under section 13 read along with Section 11(1)(b)(iii) and (v) of the TRAI Act 2000 to maintain the status quo before disconnection/blocking.

BSNL is also directed under section 13 read along with section 11(1)(b)(iii) and (v) of the TRAI Act 2000 that in no cases should blockage of traffic take place and in case of any dispute the issue should be brought to the notice of Authority.

This issues with the approval of Authority."

By the impugned communication dated 17/12/2003, TRAI has reiterated its communication of 4/12/2003 and BSNL has been asked to ensure that blockage/disconnection should not take place.

Relevant extracts are as under:-

“M/s HFCL have informed that the intra-circle Inter LDCA traffic originating from HFCL’s network and terminating in the SDCA where they do not have a POI with the SDCC tandem is being blocked by BSNL at some of the far-end TAXs. They have further informed that BSNL has blocked the traffic in another LDCA.

In this connection your attention is invited to the Directions issued by TRAI vide its letter of even number dated 4.12.2003 wherein it was directed that till the issue is resolved BSNL should restore blocked TAX POIs HFCL Infotel Limited in Punjab and maintain the status quo prevailing prior to the disconnection/blockage. BSNL was further directed that in no cases should blockage of traffic take place and in case of any dispute, the issue should be brought to the notice of the Authority.

In view of the above directions, blockage/disconnection should not take place and this must be ensured.

With a view to resolve the issue, it has been decided to convene a meeting with BSNL and M/s HFCL Infotel Ltd on 18.12.2003 at 10.00 A.M in TRAI’s office. You are requested to kindly make it convenient to attend the meeting.”

The impugned communication dated 22/12/2003 of TRAI is more detailed and again draws attention of BSNL to the communication of 4/12/2003 (referred to above) and BSNL has been asked to show cause why action should not be taken against them for violating the earlier directions of the Authority under section 13 of the TRAI Act. Further CMD, BSNL has been asked to appear before the Authority on 23/12/2003 for being heard. Relevant extracts of the letter are as under:-

“TRAI vide its Direction of even No. dated 4th December 2003 had directed BSNL under Section 13 read along with Section 11(1) (b)(iii) and (v) of the TRAI Act, 2000 as follows:

“Till these issues are resolved, BSNL is directed under section 13 read along with Section 11 (1)(b)(iii) and (v) of the TRAI Act 2000 to restore the above stated TAX POIs of HFCL Infotel Ltd in Punjab. In all other similar cases pertaining to private basic service licensees, BSNL is further directed under section 13 read along with Section 11(1)(b)(iii) and (v) of the TRAI Act 2000 to maintain the status quo before disconnection/blocking.

BSNL is also directed under section 13 read along with section 11(1)(b)(iii)

and (v) of the TRAI Act 2000 that in no cases should blockage of traffic take place and in case of any dispute the issue should be brought to the notice of Authority”.

The Direction of the Authority has to be implemented till such time it is withdrawn by TRAI or stayed or quashed by the Competent Court of Law.

From the above, it is clear that BSNL has violated the Direction issued by the Authority by virtue of powers vested in it under Section 13 of TRAI Act, 1997 (as amended by TRAI Amendment Act, 2000). In view of this, you are liable for action under the provisions of Section 29 and Section 30 read with Section 34 of the TRAI Act, 1997. You are hereby required to show cause as to why action should not be taken against you for violating the Direction of the Authority under Section 13 of the TRAI Act. Accordingly, you are hereby directed to appear before the Authority at 3.30 PM on Tuesday, the 23rd December, 2003, in order to avail of an opportunity of being heard by the Authority in this regard.”

The case of BSNL is that the impugned communication dated 4/12/2003 deserves to be set aside keeping in view the judgment dated 21.4.2004 passed by this Tribunal. According to BSNL this is a dispute between BSNL and HFCL who are telecom service providers and under the provisions of the TRAI Act, 2000, TRAI has no jurisdiction to adjudicate any dispute between two service providers and that this adjudicatory function has been clearly vested with the TDSAT.

The BSNL had originally filed an appeal with only TRAI as the respondent. During the course of the hearing, it was found that the matter pertains to a dispute between BSNL and HFCL regarding interconnection. Accordingly, BSNL was required to implead HFCL as a party. Thereafter BSNL filed an amended appeal with HFCL as respondent No.2 along with TRAI as respondent No.1. During the course of the hearing of the matter, we have heard extensive arguments from all the parties. Having heard this matter in detail, we would like to address the entire matter in two parts. First, we would look into the question raised by BSNL regarding the jurisdiction of TRAI and the legality of actions taken by TRAI which have been challenged by BSNL, alleging lack of jurisdiction in TRAI for handling the same. We would then address the dispute regarding interconnection between BSNL and HFCL with a view to resolving the same.

It is true that in Appeal No.2 of 2004 (decided on 21.4.2004 by this Tribunal in BSNL vs TRAI), the Tribunal examined in great detail the distinction that needs to be drawn in disputes relating to interconnection between the

regulatory functions of TRAI and dispute settlement function of TDSAT. This matter had arisen based on directions issued by TRAI to all operators stipulating the procedure to be followed by the operators in the event of a dispute relating to interconnection not being able to be resolved mutually by the relevant operators. Based on a detailed reasoning spelt out in the said order TDSAT had set aside the impugned directions of the TRAI and had clearly held that when a dispute arises in regard to breach of license agreement or the terms of inter connectivity between service providers, it is the TDSAT which is the sole judicial authority to decide the dispute. on a complaint filed by the service providers or a group of consumers or licensor to see that the service providers conflicts of the above judgment are as below

“By the impugned direction what TRAI wants to do is to examine the show cause notice of the operator wishing to disconnect POI and then either to keep quiet allowing the POI to be disconnected or otherwise give directions. The other alternative is for the interconnecting operator to approach TRAI for the dispute resolution with full information for the TRAI to give its decision.

Both these approaches of TRAI are wrong and against the provisions of the Act. There is no transparency and there is no formal adjudication. Such approach strikes at the very root of the principles of natural justice. TRAI also admits that : “In the event of a dispute between the service providers regarding interconnection, any one of the service providers may approach the Hon’ble TDSAT, for resolution of the same.” It is also stated that there is no question of “dispute” in a literal sense as has been provided in Section 14 of the Act. But then goes to add that merely mention of the word “dispute” does not curtail or take away the mandatory regulatory power of TRAI specially in matters of interconnection as contained in the statute. Nobody is denying that regulatory power of the TRAI, but dispute resolution mechanism is within the jurisdiction of Appellate Tribunal. TRAI cannot devise its own method of dispute resolution outside the provision of the Act.”

“Any sudden disconnection is certainly detrimental to the interest of end users i.e. consumers. Department of Telecommunications (DOT) as licensor can put appropriate conditions in the license to see that there is no sudden disruption of the service provided by the service provider and TRAI is statutorily empowered to require service providers to put appropriate stringent conditions in the interconnection agreement between the service providers and at the same time ensure technical compatibility and effective interconnection and also lay down standard of quality of service to be

provided by the service providers and other conditions as provided in clause of sub section (I) of Section II of the Act. But when dispute arises if there has been any breach of the license agreement or of the terms of the interconnectivity between the service providers, it is Appellate Tribunal (TDSAT) which is the sole judicial authority to decide the dispute on a complaint filed by the service provider. or group of consumers or licensor, to see that the service providers conform to the terms and conditions imposed by the licensor in its license and by the TRAI in the interconnection agreement between the service providers. Functions of TRAI and Appellate Tribunal are in altogether different planes.

This appeal is, therefore, allowed and the impugned direction is set aside except the period of notice for disconnection of POI which shall not be less than 10 days.”

In view of the above, we are inclined to go along with the arguments put forth on behalf of BSNL that the intervention by TRAI in the dispute raised by HFCL against BSNL is not in accordance with the scheme of the TRAI Act. This is a clear situation of a dispute between HFCL and BSNL and the work of settlement of such a dispute falls within the jurisdiction of TDSAT.

It may be mentioned that an application seeking review of the above Order dated 21.4.2004 in Appeal No.2 of 2004 was submitted by Telecom Regulatory Authority of India before us and we had occasion to revisit this matter. We did not find any merit in the application for review and dismissed the matter on 10th August 2004.

Accordingly we quash and set aside the communications dated 4.12.2003, 17.12.2003 and 22.12.2003 by TRAI.

We would now like to go into the merits of the dispute raised by HFCL in regard to interconnection with the BSNL network.

In the matter argued before us, an example has been given by the petitioner and the respondents to illustrate the nature of the dispute. Here the subscriber of HFCL located in an SDCA in Amritsar LDCA wishes to connect with a subscriber of BSNL in Barnala SDCA which forms part of Sangrur LDCA. Both Amritsar and Sangrur being located in Punjab, this would constitute a long distance call within the same Circle. The relevant clauses/provisions of the license agreement which lay down the procedure for handing over of such a call need to be now gone through. These are extracted as under:-

“1.7.6.5 – Inter-connectivity for STD/ISD calls shall be ordinarily only between DOT’s LDCC TAX and the Licensee’s LDCC TAX. In case Licensee does not have his own TAX in the LDCC, STD/ISD calls from

Licensee's SDCC Tandem/Local exchange in an SDCA in the LDCA shall be routed to DOT's LDCC TAX. This requires the licensee to connect to the nearest DOT TAX even for Intra –Circle calls that may be between two LDCCs. However, the Licensee is free to have its network for carrying the traffic entirely over his own network within Circle/Service Area.

1.7.6.6 – Calls from DoT subscriber or DoT network to LICENSEE's network will be routed in the DoT network upto the farthest point i.e. upto DoT's SDCC Tandem/local exchange in the terminating SDCA and then will be delivered to the LICENSEE's SDCC Tandem/Terminal exchange. National numbering plan, which is revised periodically from time to time, shall have to be adhered to/complied with.

1.7.6.7 – If the LICENSEE serves multiple SDCCs through one large exchange, DoT shall deliver the traffic directly into LICENSEE's large exchange from its TAX except for local and intra SDCA calls. For calls delivered from DoT's TAX to LICENSEE's main exchange, the letter shall be treated as terminal exchange and no access charges shall be payable by DoT to the LICENSEE.

The above situation of one main exchange serving multiple SDCCs does not exist in DoT at present. However, if a similar situation arises at a later date, the same facility shall be extended to the LICENSEE as well, provided it is not technically feasible to accept the calls directly by remote DoT exchange in the SDCC.

The Numbering and Charging plans shall always be adhered to by both DOT as well as LICENSEE.”

Clause 1.7.6.5 of the license provides the method by which HFCL would hand over its call to the BSNL network. The last sentence in this clause also stipulates that HFCL is free to have its own network for carrying the traffic within the circle/service area (i.e.in this case from the SDCA located in the Amritsar LDCA to Barnala SDCA located in Sangrur LDCA).

Clause 1.7.6.6 lays down the method by which BSNL is required to carry its calls and how these can be handed over for termination into HFCL network.

At this stage we need to also take note of the determination made by TRAI dated 15.6.2001 which has been quoted both by HFCL and BSNL in their favour in which TRAI went into the question regarding the manner in which a call could be handed over by a Basic Service Operator (BSO) to the BSNL network for termination in the terminating LDCA. In the matter before TRAI one of the private service providers wanted to hand over long distance calls from its network to BSNL, not at the terminating LDCA but at an

intermediate point. We do not know under what circumstances TRAI undertook to intervene in this matter which seems to be really a dispute between two service providers. We have nevertheless gone into the conclusions given by TRAI in the said determination These were as under:

“28. In the light of the foregoing, the Authority has come to the following conclusions.

BSNL’s refusal to accept at Ujjain and Indore, the STD inter network traffic for calls originating in other LDCAs is in accordance with the stipulation in the license agreement as well as interconnect agreement signed by both the contending parties.

Clause 1.7.6.5 of the license agreement gives the licensee option of carrying an STD call entirely on his network within the circle/service area

This clause (1.7.6.5) also gives the licensee the option of far end hand over of calls to BSNL for termination only. The licensee may, therefore, also use his network to carry inter-Network calls to the Far End and hand over in the terminating LDCA/SDCA to the DoT (now BSNL) in the same manner as is permitted to the DoT (now BSNL) in the license agreement. The BSNL should not refuse such Far End hand over from licensees received by them for termination within the LDCA.

Intermediate hand over of calls for transiting is not in conformity with the license agreement as well as Interconnect Agreement and, therefore, neither the licensee nor the BSNL is obliged to accept any such hand over of calls.

The authority determines and orders accordingly. This Order is made under Section 11 (1)(b)(i) and (ii) of the Telecom Regulatory Authority of India Act 1997. Though this Order has been made in relation to the specific complaint relating to Madhya Pradesh Circle, it will have general applicability in similar interconnect scenarios.”

During the arguments, it was clearly stated by Counsel for HFCL that under the clauses in the license agreement of HFCL and as per the determination of TRAI dated 15.6.2001, referred to above, there is no dispute that HFCL could hand over its call from the SDCA located within Amritsar LDCA at LDCC TAX at Amritsar. Also there was no dispute that such a call could also be handed over by the HFCL to the BSNL network at SDCC Barnala. The dispute is regarding the handing over of the HFCL calls at LDCC TAX - Sangrur.

We need to go over the determination made by the TRAI dated 15.6.2001 somewhat carefully as the language used in the concluding para of the

determination thereof has been interpreted in vastly differing ways by BSNL and HFCL. Also TRAI in their affidavit as well as through arguments of their learned counsel have also taken a view more akin to the stand taken by the HFCL. The relevant para is quoted again for the sake of clarity:-

“This clause (1.7.6.5) also gives the licensee the option of far end hand over of calls to BSNL for termination only. The licensee may, therefore, also use his network to carry inter-Network calls to the Far End and hand over in the terminating LDCA/SDCA to the DoT (now BSNL) in the same manner as is permitted to the DoT (now BSNL) in the license agreement. The BSNL should not refuse such Far End hand over from licensees received by them for termination within the LDCA.”

As already mentioned above, we need to go into the question as to how “far end hand over” of calls can be given by HFCL to BSNL for termination. If we look carefully into the language of the second sentence of the above extracted paragraph, it leaves no room for doubt that such “far end handover” can be made in the same manner as is permitted to the BSNL in the license agreement. This manner of handing over is clearly spelt out in clauses 1.7.6.6 and 1.7.6.7 of the license agreement which have been extracted and reproduced in para 11 above. It is quite clear that as per this stipulation in the license agreement, BSNL is required to carry its calls, for termination in the HFCL network up to the farthest point i.e. its SDCC Tandem/Critical Exchange in the terminating SDCA. The only exception permitted is that if the receiving service provider is serving multiple SDCAs through one large main exchange then the calls can be handed over through such a main exchange in the terminating LDCA instead of the terminating SDCC Tandem. This means that if there is no BSNL Tandem exchange in SDCA Barnala then HFCL could hand over the call at the main exchange of BSNL located in LDCA Sangrur serving SDCA Barnala. However, such a situation does not exist on ground. BSNL has its SDCC Tandem at Barnala and there is no question of HFCL therefore having the option to hand over the call in exercise of the exception mentioned above at 1.7.6.7 of the license.

We find it difficult to understand why in spite of the clear position existing in regard to the manner in which BSNL is permitted under the license to give “far end hand over” of calls and it being clearly enjoined that such a “far end hand over” by HFCL can be given only in the same manner as was allowed for the BSNL, both HFCL and TRAI are holding the view that HFCL is entitled to make far end hand over of calls at LDCC TAX – Sangrur. In fact, TRAI should not have used the words “in the same manner as is permitted by DoT (BSNL)” in the license agreement if it really meant to allow the type of

hand over which HFCL is wanting to make, namely at LDCC TAX – Sangrur”.

During the course of arguments, the learned counsel for HFCL has tried to read some meaning in his favour in the use of the words “within the LDCA” in the last sentence of the TRAI determination quoted above. It is again extracted below for the sake of clarity:-

“The BSNL should not refuse such far end hand over from licensees received by them for termination within the LDCA”.

This is a clear case of certain words/expressions being pulled out to read meanings which do not exist if they are read in the totality of the total finding on the matter. The words “within the LDCA” have to be read in continuation with the earlier sentence and with the qualification that it has to be in the same manner as is permitted to the DoT (now BSNL) in the license agreement.

HFCL has also tried to support its contention by pointing out that BSNL has accepted “far end hand over” at the terminating LDCC TAX from other operators. BSNL has denied this contention of HFCL in their rejoinder affidavit and has stated that in certain cases some of its functionaries in certain isolated areas may have wrongly understood the correct procedural position and as soon as such aberrations came to light these have been got corrected. In any case, it has been argued on behalf of the BSNL that if in some LDCA some hand over has been wrongly accepted by BSNL at some stage, no rights can accrue on that basis in favour of the Basic Service Operator (BSO)

It would be relevant also to take into account a situation which has been pointed out to us by BSNL during the course of the arguments that even if HFCL were to be allowed to have connectivity to the BSNL LDCC TAX at Sangrur, then as per HFCL’s Interconnect Agreement (Clause 2.1.2), it would be mandatorily required to set up its own LDCC TAX at Sangrur. Relevant extracts of clause 2.1.2 of the agreement is as under:-

“The LICENSEE’s network shall have interconnectivity with DoT’s network at the equivalent level at a local / tandem exchange and at the LDCC TAX.”

We could not get a clear answer from the side of HFCL whether they have set up any LDCC TAX at Sangrur. We were told that HFCL has a kind of ‘concentrator’ at Sangrur which is linked with a Mobile Switching Centre (MSC) located at some distant place outside Sangrur. This, in our understanding of the matter, does not constitute a LDCC TAX. Even on this consideration HFCL has no case for handing over its calls for termination to the BSNL LDCC TAX at Sangrur.

20. Based on the above, it is clear that the correct interpretation of the

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determination of TRAI dated 15.6.2001 would be that HFCL has no case for handing over its calls originating in an SDCA located within Amritsar LDCA and meant for SDCA Barnala located in LDCA Sangrur at the LDCC TAX of BSNL at Sangrur. They have option of interconnection with BSNL network, only of “near end hand over” at the LDCC TAX at Amritsar vide clause 1.7.6.5 of the license or of a “far end hand over” at the SDCC Tandem at Barnala but not at any intermediate point, not even at LDCC TAX of BSNL at Sangrur.

We, therefore, (i) quash and set aside the impugned communications dated 4.12.2003, 17.12.2003 and 22.12.2003 issued by TRAI and (ii) hold that HFCL is not entitled to hand over its traffic originating from the SDCA in Amritsar LDCA at LDCC TAX at Sangrur for termination to a BSNL subscriber in Barnala SDCA.

The appeal of BSNL is allowed accordingly. Costs to be borne by the respective parties.

Sd/-
(D.P. Wadhwa)
Chairperson

Sd/-
(Vinod Vaish)
Member